

Business  
Council of  
Australia



# **Business Council of Australia**

**Submission to the  
Senate Standing Committee on Education, Employment  
and Workplace Relations**

**Inquiry into the Workplace Relations Amendment  
(Transition to Forward with Fairness) Bill 2008**

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## Introduction

The Business Council of Australia (BCA) is an association of Chief Executives of 100 of Australia's leading companies. These companies are major contributors to Australia's economy, employing nearly one million Australians and accounting for over 30 per cent of Australia's exports. Accordingly, the BCA has a substantial interest in the health of Australia's economy and policies that promote sustained growth and prosperity.

The BCA has provided feedback into the *Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008* and the Award Modernisation Request through government's consultation processes over the last three months. We welcome the opportunity to provide further input through the Senate Standing Committee on Education, Employment and Workplace Relations Inquiry into the Bill.

The following submission underlines the importance of workplace relations as a fundamental driver or inhibitor of economic growth and wellbeing of Australians. It will be vital for those who are implementing and administering the *Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008* to minimise risks to productivity, employment opportunities and inflation. The submission highlights areas where administrators will need to be particularly diligent in ensuring that the correct balance in workplace relations reform is struck. In particular, the BCA is concerned about the potential for reduced enterprise-specific flexibility and reduce the links between productivity and reward.

## The Importance of Workplace Relations

More than two decades of significant reform and a strong international economy have delivered economic growth, greater employment opportunities and higher standards of living to an increasing number of Australians. A critical element in the reform package that has delivered Australia's increased growth and prosperity has been the workplace relations reforms that have supported Australia's capacity to compete and modernise. While policy areas such as education, innovation and infrastructure are important to Australia's productivity and growth, workplace relations has the capacity to reinforce, or weaken, the effectiveness of the other reform measures. This has been confirmed in a recent Reserve Bank study.<sup>1</sup> The OECD and the World Bank, too, encourage all nations to seek flexibility in their workplace relations systems in order to promote social and economic prosperity.

Past workplace reforms have been a steady evolution towards increasing flexibility in the workplace, reducing barriers to job creation and focusing the overall workplace relations system on agreement making at the enterprise level. The challenge for Australia from here is how to maintain economic growth and the opportunities that flow from it in the face of changing demographics and intensifying global competition. Ongoing productivity improvements and enhanced workforce participation will be key to meeting these challenges.<sup>2</sup> Australia must continue to improve the way it does business and uses its resources, in particular the skills ('human capital') of Australians. Effective labour markets are at the heart of the productive potential of the economy. The quality of the Workplace Relations system will enhance or form barriers to employment opportunities, provide rewards or disincentives for effort, skills attainment and innovation. It impacts on the wages earned by employees, the type and quality of goods and services offered, prices that consumers and other businesses pay, and investment returns for shareholders and superannuation fund holders.

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<sup>1</sup> Kent, C. Simon J., *Productivity Growth: The Effect of Labour Market Regulations*, Reserve Bank of Australia, RBA: RDP 2007-(04).

<sup>2</sup> Department of the Treasury 2003/2004 Financial Budget, Budget Paper No. 1, Part 2: Fiscal Strategy and Budget Priorities, Statement 4: Sustainable Growth in Australia's Living Standards, 'How population, participation and productivity interact'.

Australia's workplace relations system has a direct impact on productivity and participation and can directly impact on the economy's robustness to inflation or downturns, as outlined below.

### ***Supporting Productivity***

In order to compete, Australian companies must strive for international best practice, improve productivity and increasingly engage in innovation, introducing new products or services or improving the quality and reducing the price of existing ones. Past innovation has changed employment significantly. Rather than the traditional production lines, more employees are in offices, work from home and work non-standard hours. Increasingly, human capital and skills drive productivity and competitiveness.

Productivity in the workplace depends, among other things, on how businesses employ their workforce, structure their operations, and reward employees for contribution and effort. As business conditions change, the capacity to adapt is critical to ongoing business success. Such an adaptation process is facilitated by workplace relations policies that promote flexibility and closer interaction and understanding between employer and employee at the enterprise level. Productive workplaces are fostered through direct employee/employer relationships, matching reward to effort, personal accountability and innovation. Without productivity increases, businesses cannot compete successfully, sustain real wage increases or create new jobs as they grow. Workplace relations reforms to date have encouraged direct employee–employer relationships, shifting Australia's workplace culture towards enterprise-specific circumstances.

It is therefore vital that Australia's workplace relations system continues to:

- provide business with the flexibility to adopt productivity–enhancing practices specific to the needs and capabilities of the enterprise and employees;
- encourage direct employer-employee relationships and a co-operative working environment;
- promote productivity through closer links between performance and reward;
- enable flexibility reflecting enterprise specific circumstances;
- assist Australian business to keep pace with the competitive challenges and consumer demands of a modern economy;
- minimise barriers and disincentives to workforce participation; and
- improve incentives to increase individual capacity and skills.

The Government needs to ensure that there is sufficient flexibility in the new workplace relations system to support productivity and competitiveness and that measures in the Transition to Fairness Bill do not result in greater standardisation across business and the economy.

### ***Supporting Economic Stability - Minimising Inflation and Downturns***

Greater labour market flexibility has helped Australia to withstand domestic and global shocks and an effective workplace relations system is needed to weather future shocks and minimise downturns and their impacts. Recessions hurt vulnerable Australians first and most harshly. The employment effects of recessions linger longer in economies which have less flexible workplace relations systems. Workplace reform has created a more direct link between productivity and reward. This has removed the threat of inflationary wage breakouts and interest rate-driven boom-bust cycles, supporting strong, real wage growth while maintaining low inflation and interest rates.

If wages and other costs of employment increase ahead of productivity growth, then real unit labour costs rise and ultimately jobs are lost. Under a less flexible workplace relations system, a positive economic shock such as the current resources boom is more likely to lead to unsustainable wage increases across the economy, inflation and higher interest rates. Adopting new technology, restructuring, changing methods of operation, including shifts and hours has enabled Australian employers to retain their businesses and employees. As former Reserve Bank Governor Macfarlane has observed:

*'with labour market deregulation, when costs of a particular type of labour rose, it did not get spread broadly through the labour force, as in earlier times. The economy thus became more able to withstand inflationary shocks such as a fall on the exchange rate, or a rise in raw material prices, without them being passed through in their entirety to inflation.'*<sup>3</sup>

Labour market reform meant that by the Asian financial crisis (1997-98), business had capacity to absorb cost shocks by undertaking productivity improvements, avoiding inflation, high interest rates and a downturn involving significant job losses.

### **Supporting Participation and Social Inclusion**

The Business Council of Australia has consistently supported the provision of a genuine safety net and fairness in the system. However, this must not come at a cost to those who are currently not in employment. Those who most require protection, including the long term-unemployed, people with disabilities, indigenous job seekers, students and retirees are those who are not in the workforce. The most effective method of improving the welfare of these disadvantaged individuals is through employment. Limiting the opportunities for individuals to work curtails their financial independence and excludes them socially and economically. Overzealous protection for workers through the workplace relations system comes at a cost which ultimately can reduce incentives for job creation and retention. There are a number of models globally which provide safety nets outside the workplace relations system, which emphasises minimising the time spent by individuals in unemployment, rather than maximising job security inside the workplace.

Australia must seek to boost the potential pool of employees, and businesses need to ensure that workers are as productive as possible. A system that concentrates on increasing productivity and growth supports increased living standards, including greater employment opportunities, for more and more Australians. Conversely, limiting workforce participation opportunities impacts on Australia's most vulnerable and will result in a less prosperous Australia, with greater calls on the government's budget and reduced scope for providing a sustainable tax-funded safety net for the wider community.

Greater workplace flexibility, not less, will be required to maximise workforce participation. High rates of employment and participation rely on the costs of employing each individual closely matching that individual's productivity. Only then can workers be sustainably rewarded for their contributions, and only then do employers have an incentive to maximise the number of employees they take on. Increasing costs above productivity makes each new hire a less likely prospect. While wage increases are an obvious source of cost, the relative cost of employment can also be increased through regulation and non-wage conditions. In addition, raising the cost of hiring above the benefits of doing so delays the first step of younger and/or less skilled employees into job markets. This prevents them from gaining the experience they need or a 'toe-hold' in the job market. The barriers to and costs of job creation have been lowered and the number and range of employment options has increased. Care must be taken not to increase them.

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<sup>3</sup> MacFarlane, Ian. "The Search for Stability", 2006 Boyer lectures, ABC 2006, available at <http://abc.net.au/rn/boyerlectures/default.htm>

## **Risks within the Proposed System**

The BCA's views regarding the importance of statutory agreements in improving workplace flexibility, more direct employer/employee relations, greater accountability and clearer links between productivity and reward are well known. However, the BCA recognises that the government went to the election with clear workplace relations policies which included the removal of AWAs. The BCA welcomes the commitment government has demonstrated to date to pursue these policies in a way that will continue to support internationally competitive outcomes for business. It is clear that the *Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008* and explanatory documents are consistent with those commitments.

However, it is also clear that there are several risks in the system that will need to be managed through the implementation phase and by the administrators of this policy. It is vital that Australia have a workplace relations system which strikes the right balance between productivity, participation and economic growth, and providing a fair system for those in current employment. Given the importance of this a regular review to test the system's capacity to deliver against the areas of supporting productivity, economic stability and participation and social inclusion, as discussed in the first half of this submission, will be required.

The BCA believes that the following are areas of risk that will need to be monitored and managed:

***Employment costs must be internationally competitive.*** As the National Employment Standards (NES) and the award system and no disadvantage test combine to set a minimum set of conditions, they also set a minimum total cost of employment. The BCA believes in the need for a genuine safety net. It is vital for both economic and social prosperity that the combined impact of the Award system and the National Employment Standards act as a genuine safety net but are not used to increase the cost of employing individuals above their productivity levels. As outlined in the first part of this submission, keeping employment costs in line with productivity will be vital for Australia's competitiveness and the ability of business to grow and hire additional staff.

The proposed safety net allows for flexibility upwards at each stage without permitting flexibility down. This layered approach to flexibility has the potential to add to business costs as each component builds on the other. For example, the conditions of an Individual Transitional Employment Agreement (ITEA) must satisfy the no disadvantage test relative to the relevant collective agreement. The conditions within a collective agreement must not derogate from the relevant award. There is to be a flexibility clause within modern awards designed to reflect industry enterprise specific circumstances but again these conditions cannot derogate from the Award itself. Finally, the Modern Award can build on but must not derogate from the National Employment Standards.

In addition, the Bill at present envisages that the Minister can provide further award requests in the future. It is important that this is not used in such a way as to compromise the need to ensure that total employment costs faced by Australian employers are internationally competitive.

***Employment costs must reflect productivity in order not to discourage job creation.*** As noted above, enhancing workforce participation is a key economic imperative for Australia and is also a key instrument in addressing long-term and structural disadvantage. Consistent with the draft Award Modernisation Request, it will be important for the various implementation and administration bodies to balance the incentives for job creation and individual participation against the needs and conditions of those already in

employment. It is also important that any future requests also acknowledge overall economic imperatives.

***Importance under this new system of getting the Award system right.*** The BCA believes that award modernisation is a crucial part of workplace relations reform. The BCA's 2005 Workplace Relations Action Plan called for award simplification as part of a process of achieving greater flexibility in agreement making, including a reduction in the number of awards and, over time, moving to a single, statutory minimum set of conditions to replace the award system. In BCA's view, rationalisation and simplification should:

- support agreement making at the enterprise level;
- support flexibility and productivity in the workplace;
- ensure that awards provide a genuine safety-net; and
- support a simpler system of workplace relations regulation.

Despite previous reforms, excessively complex and prescriptive awards remain a fundamental part of Australia's workplace relations system. The degree of specificity in Australia's awards limits the scope to differentiate employee arrangements to reflect roles, efforts or capabilities, undermining flexibility in employment arrangements and productivity. No other country has such a complex system of minimum wages and conditions. Modernising a complex system which is so entrenched will clearly be challenging and not without potential pitfalls. The BCA considers that the awards that emerge from the modernisation process must:

- be able to properly reflect the circumstances of modern Australian workplaces;
- provide maximum flexibility to enable employers and their employees to adopt working arrangements that best suit the needs and circumstances of individual employees and of the business;
- not reduce incentives to bargain;
- not result in extension of award coverage to categories of employees who were not previously subject to such coverage; and
- not result in cost increases including labour costs and increased regulatory burdens that could impair the competitiveness of Australian business.

Given the projected removal of individual statutory agreements it is even more important that the award system be rationalised and simplified. The BCA is broadly comfortable with the instructions on award modernisation and notes the government's commitment to economic prudence. However, as implementation proceeds, it is important that the following risks are monitored and managed over time:

- ***Capacity for differentiation.*** The capacity for differentiation needs to be maintained as the system evolves. Although convergence of national conditions is highly desirable as a building block in a unified national labor market, this should not result in a loss of capacity to reflect differences in specific labor markets or to provide appropriate incentive structures for individuals. The need for a capacity to differentiate further underlines the importance of ensuring that the award system is only used as a genuine safety net.

- *Maintaining flexibility.* The Bill reflects the policy intention that the modern award system will contain flexibility for changing industry conditions. However, history shows that over time these structures become fixed and difficult to change.
- *Ensuring that the award simplification process and the renewed emphasis on awards is not used as a means of improving and extending conditions irrespective of the specific circumstances of businesses and broader economy.* The bodies implementing and administering this legislation will need to ensure that the award simplification process does not result in increased pay and conditions above affordable productivity gains or that unsustainable costs are spread through sectors or the economy. While we note the clear directions regarding economic responsibility contained within the current draft request, mechanisms for monitoring this should be established.
- *Extension of coverage to non-traditional award employees.* The BCA is also concerned about the potential for an extension of awards into new areas, including those associated with the emergence of new industries. The implementing bodies will play a crucial role in ensuring that this does not become a risk to economic growth and business competitiveness. More specifically, the BCA notes that in paragraph 2(a) the word ‘beyond’ should be replaced with ‘to’ in order accurately to reflect what the BCA understands the policy intent to be.

***Minimise complexity and streamline administrative processes and compliance costs for government, employers and employees.*** While the award modernisation process, as envisaged, seeks to reduce complexity and maximise flexibility, the administrative processes associated with implementation of the legislation should be subject to ongoing simplification and review.

## **Conclusion**

Prior to the election the government made a commitment that the announced workplace relations reforms would be implemented in such a way as to not damage Australia’s ongoing international competitiveness, jeopardise business capacity to innovate and increase productivity, or reduce employment opportunities. The draft Bill and associated documents are consistent with those commitments but potential risks within the system as it evolves over time must be monitored and managed through the implementation and administration processes.

The capacity of Australia’s Workplace relations system to maintain and improve productivity and workforce participation has a direct impact on the standards of living that all Australians will enjoy. Implicit within this is the need to balance a number of competing imperatives, including balancing the needs of those already in employment with those not in the workforce. Australia’s workplace relations system needs to reflect international competitive realities. Government must be vigilant in ensuring that Australia’s system of workplace relations remains flexible, adaptable and supports strong positive responses to Australia’s future economic challenges.

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