
IS WORK IN AUSTRALIA WORKING?

A DISCUSSION PAPER

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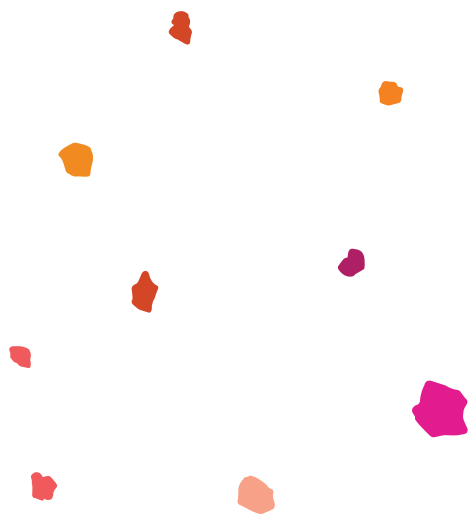
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INTRODUCTION

This paper was prepared to provide a framework for the Per Capita roundtable on work. It is intended to spark debate and discussion. As such it is deliberately and unashamedly polemical. The paper sets out what I see as major themes in Australian work and then identifies some core problems that must be addressed.

My answer to the question posed by my title is a firm no.

Work, as it is structured by employers and experienced by workers, is failing many Australians, and their numbers steadily increase. There is an urgent need for a new approach, a need that can be seen in both the statistics and the lived experience of millions of Australians.



MACRO THEMES IN AUSTRALIAN WORK

Set out below are a number of themes that can be identified from the macro environment (social, economic and political) that are affecting the way we work.

This is the context in which potential changes to labour law (and proposals in areas as diverse as taxes and transfers, education and industry policy) should be examined. They are also the background against which any strategy for union revival must be tested.

SCOPE OF CHANGE

It is important, at the outset, to acknowledge the breadth of change Australia has experienced since the late '70s. These changes have had a profound effect on our working lives.

THEN

- Protected economy
- Closed shops / preference etc
- Awards & centralised wage fixing
- More stable, secure jobs
- Larger public sector / large GBEs
- Institutional union power

NOW

- Globalised, trade exposed economy
- Open shop organising
- Enterprise bargaining
- Insecure work, contracting chains
- Individual arrangements
- Hostile political environment

There has been compositional change in the workforce that is substantial and reflects structural adjustments. Manufacturing has had a declining share of employment for an extended period but, since the GFC, has seen a decline in absolute employment as well. Female participation rates have risen sharply, and various industries (notably school education) have become increasingly feminised.

DECLINE OF THE COLLECTIVE

The dramatic decline of union density (and industrial activity such as strikes) is well known. This has coincided with, and is both a function and cause of, a broader decline in the social consciousness of the possibility of the collective. While all “joining” organisations have suffered, unions have been particularly badly affected. The social environment in which unions operate is relevant to our performance and our ability to organise. The instinct for solidarity no longer comes as naturally as it once did in our society.

Australia is one of the least unionised countries in the developed world. Our decline is the result of deliberate political decisions, not the result of uncontrollable natural forces. Union membership is 15% overall, and only roughly one in ten private sector workers belong to a union. Union density is currently at its lowest point since Federation. By comparison, there was close to 40% union membership for most of the twentieth century, with a peak of 64.9% in 1948.

EMPLOYER HOSTILITY

With few exceptions, employers have always disliked unions because of the effect strongly organised workers can have on the wage share and the design of work. But in Australia, it has become not just acceptable but expected for employers to seek to hamper or outright block organising and to actively de-unionise organised workers. An independent worker voice is seen as something to be fought, often at all costs. The legitimacy of unions is not accepted by most of Australia’s business and political class.

OUR INSTITUTIONS

Two of our central labour market institutions – unions and collective bargaining – aren’t working in large sections of the economy. Partly this is because we regulate in way that no longer makes sense in relation to the structure of work, and partly it is due to a lack of sufficient change on the part of unions themselves. We have a labour law written for workplaces like car plants, and we tend to have the union and member participation structures to match. Collective action is tightly restricted, organising rights are limited and the free-rider problem is hard-wired into the system. As well, the level of demands of union members is often constrained by the limitations of the “system” that we operate in. Where it has been working to the benefit of workers (for example in commercial construction) workers and their unions routinely face additional special restrictions or adjustments to the system which are explicitly designed to remove acquired worker power.

FEATURES NOT BUGS

Many of the issues set out in this paper are the direct and (usually) intended consequences of the way our system is designed. The prolonged, systemic low wage growth we see in Australia’s labour market is a

consequence of the weakness of our labour market institutions. Waves of so-called reform were specifically intended to reduce the power of organised workers and hold down wages – that is, to reduce the relative power of labour against capital. In that, the “reforms” have been a cracking success.

Labour law serves a range of purposes, but two in particular: a protective function and an economic function.

On the first (protection of workers from clear exploitation) the system is, as discussed below in relation to compliance, an abject failure.

The economic function is not to “raise productivity” and there is no evidence Australia’s tampering with legal frameworks has much affected productivity at all. Instead, labour law serves a distributional purpose – to provide a framework within which workers receive their share of the benefits of productivity and wider economic growth. As discussed below in relation to wages, we fail against that purpose too.

WE REGULATE EMPLOYMENT BUT NOT WORK

The Fair Work Act has a misnomer in its very title. It regulates a specific type of work - the legal relationship of employment – and not work generally. Where it does not apply, or has limited application (like the sham end of independent contracting or on-demand platform work) it’s largely anything goes. This encourages pernicious behaviour, in particular regulatory arbitrage, where employers have a built-in incentive to structure jobs to avoid obligations and regulatory protections for workers. A unified (in the sense at least of complete) approach to regulating work is required, something already at the core of workplace health and safety law.

COMPLIANCE IS OPTIONAL

Wage theft (including non payment of superannuation) is endemic. Few business are caught and even fewer are punished. In some sectors wage theft is the business model. It is difficult to think of a major area of regulation where wholesale non-compliance is simply accepted. Weak unions, absent from so much of the economy, make the problems more pervasive and harder to fix.

GENERATIONAL INEQUITY

As the labour market changes, younger workers are less likely to hold the sort of role that allows for the building of household financial security. Union structures, as noted above, have proved incapable of meeting the needs of young workers who may work across several sectors of the economy and identify outside of the traditional model for workplace or occupational participation.

“RISK SHIFT” FROM EMPLOYERS TO WORKERS

The shifting of risk from employers to individuals – via the growth of contracting and the huge variety of forms of non-standard work and contracting-chains. This is a story about the slow death of the social contract associated with work. The latest development is risk shifting to consumers and workers – for example in the voucher-based design of social programs such as the NDIS.

REGULATORY AND ORGANISING FRAMEWORKS AREN'T FIT FOR PURPOSE

Traditionally, our labour law framework (and our union structures and organising methods) were predicated on the assumption that we were seeking to regulate ongoing, direct, usually male and generally full-time employment. This assumption is no longer safe: precarity takes a number of forms, including casual work and labour hire; funded rather than State-delivered services; contracting out, independent contracting, franchising and the various manifestations of the supply chain. The steep decline in direct employment has been critical to change in the power balance between labour and capital in Australia. Fewer of us than ever work directly for an organization with economic power or autonomy.

NON-LINEAR WORK / BROKEN CAREERS

The rising incidence of non-linear patterns of work, education and careers has continued. Our labour law (and key aspects of welfare/ transfer payments system) are built around lifetime patterns of work that are increasingly rare. At the same time, “new economy” jobs – here and overseas - throw up a very “old economy” set of issues about work – around wages, hours, safety, tools of the trade and work intensity.

TECHNOLOGY

There is no doubt that technology has an increasing capacity to substitute for labour, in relation to tasks of increasing physical (mechanical) intricacy and cognitive complexity. The deployment of AI in a range of functions requiring the processing of information, and the recognition of patterns in data (including via Natural Language Processing) is the next step. Macro evidence of an increased rate of job change and destruction is hard to find. What is clearer is the effects of technology at the level of individuals and individual firms. As experienced by people at work, technological change is often highly disruptive.

JOB POLARISATION (HOLLOW MIDDLE)

The job polarisation effect – a hollowing out of the stable middle income part of the job market, the locus of many traditional “union jobs” in Australia and elsewhere in the developed world. Many low wage service occupations are assumed to be immune from technological change, however this prediction tends

to overlook the competition within labour markets if change causes a shrinking pool of jobs as a result of automation.

WORK INVADES & DOMINATES LIFE

This is a story about work intensification, the lack of privacy associated with electronic surveillance at work (the end perhaps of “empty labour”), drug testing and bodily integrity, and out of hours. There has been a large extension of employer power into the regulation of private conduct (including online). “Flexibility” is often experienced by people as the need to be available for work dominating all other aspects of their lives.

WORK AS AN INDIVIDUALISED CONTEST

The modern experience of work is a never-ending Darwinian contest between individuals – a world of performance reviews and “spill and fill” redundancies where social solidarity between workers is systematically eroded, as are notions of work as a collective endeavour (despite the rhetoric of teamwork).

STATIC REAL INCOMES

Despite productivity increasing steadily and corporate profits being very strong, wage growth in Australia, in all sectors, is at record lows. Wage growth is at or below the level at the very depths of the early ‘90s recession. There are, essentially, no bright spots for wages: the picture is bad in all industries. This has resulted in static or falling real incomes for many people, with any rise in living standards being funded by debt (or rises in asset prices, principally residential real estate). Incomes at the top of the distribution are rising faster than the middle, which in turn is rising faster than the bottom. Disparities of wealth are wider again. The result is rising inequality. Australia now has the reverse of the problem we had in the 1970s: incomes are growing at a much slower rate than productivity.

FINANCIALISATION OF WORK

Increasing financialisation of work is direct, for example by workers being engaged as voucher-based public services, independent contractors, and indirectly via processes like franchising, and the role financial capital plays in patterns of investment (e.g. the often pernicious effect of private equity capital in relation to jobs).

CREDENTIALISM

A greater and greater proportion of the workforce is required to have formal post-school qualifications, and the number of licensed occupations continues to rise. With this has come greater levels of personal

accountability or “professional responsibility” on individual workers, although often without the traditional benefits of professional status: social capital, higher incomes and relative job security.



CORE PROBLEMS

The following are the “core problems” that arise from the current structure of Australian labour law. In summary, our organising has been insufficient, rights to organise are ineffective or too easily avoided, enterprise level bargaining has failed, and the safety net is being eroded over time.

THE SCALE AND MODEL OF OUR ORGANISING

Australian unions have failed to successfully organise to scale and we remain very dependent on a highly resource intensive model based on sign-ups by salaried organisers working face-to-face with workers.

FREE-RIDER

The free-rider problem is a central, deliberately created feature of our system. The number of workers covered by union collective agreements is around double the number of union members. In brutal terms, the system makes it superficially “rational” even for a pro-union worker to not join and pay dues. By defining a core human right down to “freedom from association” and simultaneously making collective activity the principal means for workers to secure gains, we send workers on a fool’s errand.

RESOURCING (FAILED) BARGAINING

Almost 25 years ago, Australia moved to enterprise bargaining, a tectonic shift for which unions were inadequately prepared, and whose consequences for traditional forms of union organisation were poorly understood. Enterprise bargaining has not yielded gains to large sectors of the workforce, and in some industries it is a battle to simply maintain Award conditions and a very modest premium on minimum wage rates. The logistics and cost of bargaining, sometimes site by site, is a huge burden on union resources for very limited gains.



BARGAINING AND POWER

In huge swathes of the private, public and government-funded sectors, unions are required to bargain with a legal entity – the direct employer - which has no or little economic power and no real ability to agree to claims. Enterprise level bargaining is predicated on employers being economically autonomous. Most are anything but. Consequently, what the system does is force us to use processes that can't result in major gains for working people.

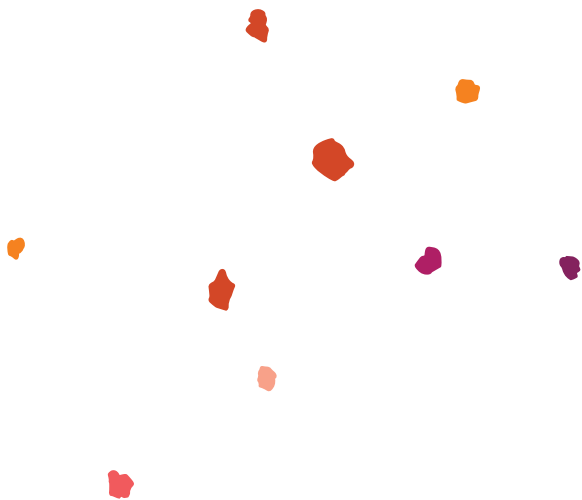
We have to change enterprise bargaining to collective bargaining, where workers are able to aggregate their power in way that aligns with the way their job actually works so they can secure real, sustainable gains.

LACK OF POSITIVE ORGANISING RIGHTS

Australia lacks proper protection for the right to organise. While there are (notionally) protections against adverse action, there is no positive right for a worker to get organised, and participate fully in their union (including organising others). The rights that do exist are ineffective or too easily avoided and corporations can expect to pay no real price for being militantly anti-union.

INADEQUATE AND IRRELEVANT SAFETY NET

The Award system (minimum wage rates and conditions like penalty rates) has been under constant pressure since 1996. Successive rounds of legislation have allowed trade-offs against (or total contracting out from) the safety net. Minimum wages and other Award rates have decoupled from market rates. Contingent workers and the lowest paid have borne the brunt of the negative effects. The overall result is a gradual erosion of the relevance and integrity of the safety net.



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