



Submission to the Productivity Commission

Workplace Relations Framework Inquiry

A plan to secure our next generation of industrial employment

Manufacturing Australia

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1. Australian manufacturing's productivity challenge

More than 936,000 Australians, or 8.1 per cent of the total workforce, work in manufacturing, the nation's fourth-largest employing sector¹. Manufacturing employees have typically enjoyed long-term, stable jobs and above-average wages and conditions: key elements in the sector's status as a preferred employer. Manufacturing operations are often in outer-suburban and regional Australia, offering many Australians, and their surrounding communities, the benefits of rewarding career opportunities outside of our capital cities. In addition, for every one manufacturing job, between two and five jobs are created².

However, Australia's manufacturing sector faces a profound productivity challenge. Multifactor productivity in Australian manufacturing has been in decline since 2003/4³. Manufacturing and its related services now contribute just 6.8 per cent of GDP, (33.5 per cent of total merchandise exports in 2013) compared with around 30 per cent in other advanced OECD economies around the world.⁴

Clearly, boosting manufacturing productivity is broader than just labour productivity. It must also involve training and skills development at all levels of business, better alignment between research and industry, reducing the burden of uncompetitive taxation and red-tape, public and private investment in infrastructure and sensible energy policy.

But labour productivity has to be part of the debate if we are to maintain the powerful combination of economic and social benefits that a strong manufacturing sector delivers to the Australian community, and secure the next generation of industrial employment in Australia.

There is much at stake. Australia cannot afford to allow its manufacturing sector to wither. As Professor Göran Roos noted in his 2011 report to the South Australian government 'Future of Manufacturing': "It takes longer and is much more complex and costly to re-build a competitive manufacturing industry than it is allowing it to die. A case can be made that the cost of regaining a lost competitive manufacturing sector can be higher than the net gains from the resource boom"⁵.

In its review of the workplace relations framework, the Productivity Commission has the opportunity to recommend reforms that respect the strong safety net and employment standards of the current system but amend outdated and inflexible aspects that act as a deterrent to growing and securing investment and employment in Australian manufacturing.

This discussion paper proposes a range of measures that would encourage greater workplace flexibility and direct engagement between employees and employers, while maintaining a strong safety net and high employment standards for manufacturing workers.

¹ http://awpa.gov.au/our-work/sector-specific-skill-needs/Manufacturing_workforce_study/Pages/default.aspx

² <http://www.thinkers.sa.gov.au/roossummary/>, p5

³ <http://www.pc.gov.au/research/completed/page-multiple-page-154472/manufacturing.pdf>

⁴ Manufacturing into the Future - Professor Goran Roos, 2011

⁵ http://awpa.gov.au/our-work/sector-specific-skill-needs/Manufacturing_workforce_study/Pages/default.aspx

⁶ <http://www.thinkers.sa.gov.au/roossummary/files/inc/917488524.pdf>, p7



2. Workplace relations reform: Manufacturing Australia's position

An efficient and flexible labour market is vital to global competitiveness in manufacturing, and it is an area in which Australia's competitiveness gap is worsening. During much of the 1990s and early-2000s, labour productivity grew strongly in Australia, averaging 3.1 per cent growth per year from 1993-94 to 2003-04. However, in the second half of the 2000s productivity performance sank, only averaging 1.4 per cent per year from 2003-04 to 2010-11. Although it has recovered modestly since then, it is still well below the peaks of the 1990s and early-2000s.⁶

Manufacturing Australia believes that an efficient and effective labour market is best achieved through a workplace relations framework that supports three fundamental principles:

1. **A strong "safety net"** in the form of national employment standards is fundamental to Australia's workplace relations system, so that employees and employers alike can have confidence that wages, conditions, rights and obligations meet community expectations.
2. **Direct engagement between employees and employers** is the most effective way to build understanding of customer, employee and business needs at the local business unit level. Direct engagement is supported preferably through individual arrangements that respect the "safety net", or collective agreements with employees and/or unions where this is preferred.
3. **Flexibility at work is a necessity for employees and employers alike.** Shifts in technology, dynamic global markets and changing levels of demand are just a few reasons why flexibility is critical to ensuring a productive workplace. Creating flexible and diverse workplaces provides the opportunity for manufacturing workplaces to evolve and broaden, from being traditionally male-dominated with full-time jobs predominating, to offering new occupations and career paths and drawing from the largest possible pool of skilled workers to fill these future roles.⁷

Australia's industrial relations system should facilitate a fair workplace culture that supports internationally competitive workplace productivity. Such a culture, underpinned by the three principles above, will be necessary for Australian and international businesses to invest in manufacturing and secure the next generation of industrial employment in Australia.

⁶ <http://www.abc.net.au/news/2014-02-06/ged-kearney-wages-productivity-claim-overstated/5227450>

⁷ <http://awpa.gov.au/publications/Documents/Manufacturing%20workforce%20study%20key%20messages.pdf>



3. Defining the “employment relationship”

Productive enterprises rely on strong, constructive relationships between employees and employers.

Manufacturing Australia believes that an ideal employment relationship is characterised by the following:

- Employees should have confidence that their employment is supported by a strong safety net of wages and conditions.
- Employees should be able to identify and improve processes and practices in the workplace, with the support and guidance of managers with appropriate skillsets.
- Employees and employers should have the same rights and responsibilities when engaging in enterprise bargaining. This includes the requirement to bargain in good faith, to engage in genuine and meaningful dialogue and to regard industrial action as a measure of last resort.
- Union representation should be open to all employees, but not the default position.
- Employers should be able to engage directly with their employees, and vice versa.
- Trust and transparent communication between employees and employers is cultivated.
- Employees should be able to understand the expectations of their roles, be provided with all necessary tools to perform their roles and be held accountable for their roles.
- Agreements between employers and employees should provide certainty and clarity about core elements of the employment relationship, such as wages, conditions, working hours etc, but not include matters not directly related to the employment relationship.
- Employment relationships should enable sufficient flexibility to respond to changes within the enterprise or outside it, to adapt to changing demands on either employees or employers, and to enable the enterprise to access the largest possible pool of talented employees.
- Arbitration or intervention by third parties in the employment relationship should be a measure of last resort where agreement cannot be reached between the employer and the employee and where other avenues have been exhausted.



4. Manufacturing Australia’s recommendations

Recommendation 1:
*The Fair Work Act should limit matters covered by an enterprise agreement to the **direct employment relationship**, relying on the “matters pertaining to the employment relationship” principles in the *Electrolux* case. Terms restricting the use of labour hire and contract labour would be one type of matter that could not be included.*

<p>Summary</p>	<p>As part of the introduction of the Fair Work Act in 2009, the laws concerning what type of matters were capable of being contained in a collective agreement were altered to allow for the inclusion of terms that relate to the relationship between an employer and union. Since then, businesses have been subjected to claims that extend beyond representational rights and put union officials and delegates in a privileged position in the enterprise.</p> <p>Further, over the years, courts have considered whether the particular causes relating to labour hire and contract labour are considered to be matters about the employment relationship, with varied outcomes. Under the <i>Workplace Relations Act 1996</i> such matters were ‘prohibited content’. This is not the case under the <i>Fair Work Act</i>.</p> <p>Our businesses rely on labour hire to deal with seasonal demand, peaks in volume and providing relief for sick or injured employees. Clauses in enterprise agreements on labour hire typically require employers to pay labour hire workers the same rates and conditions as its permanent workforce. This means that wages and conditions in the labour hire sector can be artificially inflated. Other restrictive labour hire clauses include: maximum periods for which labour hire may be engaged; the requirement to consult with the union before labour hire is used; the circumstances under which they can be engaged.</p> <p>Limiting the matters which can be included in enterprise agreements to “matters pertaining to the employment relationship” and making terms about labour hire unlawful would ensure enterprise agreements’ terms are about employment matters of direct relevance to the parties to the agreement (the employer and employees).</p> <p>The High Court in <i>Electrolux</i> noted that demands of an ‘<i>academic, political, social or managerial nature</i>’ are not matters pertaining to the relationship between and employer and an employee. Manufacturing Australia proposes that these guiding principles be more clearly established in legislation to avoid any argument that such matters could be included in an enterprise agreement. This could be done by legislating an exhaustive list of what matters may (and may not) be contained in enterprise agreements. Manufacturing Australia proposes that these matters would be generally consistent with the matters capable of being included in modern awards.</p>
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Recommendation 2:

Laws governing **protected industrial action** should be tightened to minimise the damaging effects of industrial action, requiring a high threshold to be met before protected action can be taken. The Act should provide for reciprocal rights and obligations between employees and employers in relation to taking protected action.

<p>Summary</p>	<p>Industrial action is financially damaging to employers, employees and the economy and should be considered a ‘last resort’ measure. Industrial action can significantly impact a company’s bottom line and is not conducive to a culture of shared responsibility and prosperity. The mere threat of costly industrial action (when that action can be too easily taken) can also lead to employer concessions that are an impediment to more productive working arrangements and that are not in the mutual best interests of employees and the employer.</p> <p>Manufacturing Australia therefore recommends that the threshold for protected industrial action should be high for both employees and employers:</p> <ul style="list-style-type: none"> • all claims lodged by bargaining representatives need to be reasonable and sensible; • parties must have participated in genuine and meaningful negotiation discussions; • relevancy and justification of the claims must be established; • bargaining has reached an impasse. <p>Where negotiations do break down, employers should have equivalent rights as employees to take protected action. Presently employers are only able to react (by imposing a lockout) after a union commences protected industrial action while employees have the ability to engage in covert industrial action in the form of “go slows” and the employer is usually powerless to respond.</p> <p>Changes to the criteria should also apply in relation to terminating industrial action, as the threshold is currently too high.</p> <p>Requiring the parties to have participated in genuine and meaningful talks before being able to access protected action prevents the outcome that occurred in the JJ Richards case, whereby it was ruled that industrial action could be used as a means of compelling the employer to bargain, despite having made no application for a majority support determination. Manufacturing Australia believes it is highly inappropriate to force bargaining to commence through industrial action when there are other avenues, such as majority support determination, and these have not be exhausted.</p>
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Recommendation 3:
*The Fair Work Commission should be able to **take into account evidence of “abuse of process”** in determining whether to grant protected action status over negotiations for the renewal of an agreement.*

<p>Summary</p>	<p>At times, processes unrelated to enterprise bargaining are used as a means of manipulating the bargaining process and there is no mechanism by which the Fair Work Commission (FWC) is able to intervene or apply sanctions.</p> <p>An example is that State safety legislation, aimed at properly empowering workplace representatives with authority to prevent safety threats, is open to abuse as an industrial relations tool, both during an agreement’s term and during the process of bargaining.</p> <p>The FWC should have the ability to exercise appropriate discretion in identifying and responding to abuses of process relating to State and Federal legislation outside its core responsibilities.</p> <p>State safety legislation should also be amended to include appropriate penalties, and the withdrawal of individual authority where a workplace representative has been found to have abused their authority.</p>
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Recommendation 4:

*The system should support employers and employees **bargaining directly**, without third party involvement, where this is preferred. Statutory recognition should be given to alternatives to the current collective bargaining regime and the Act should better facilitate individual flexibility alongside collective agreements.*

<p>Summary</p>	<p>Direct engagement between employees and employers promotes confidence between those parties to secure a fair market-based outcome, on either a collective or individual basis. Direct engagement creates a more positive basis upon which businesses and their workforce can actively adapt to change and drive competitive productivity improvements.</p> <p>To support increased direct engagement, the current law regarding default union bargaining representation should be removed, and alternatives to collective union agreements should receive statutory endorsement under the Fair Work Act where these are mutually beneficial and preferred.</p> <p>Common law collective agreements:</p> <p>One alternative would be common law collective agreements by deed poll. Such agreements would have to meet minimum provisions governing wages and employment conditions, satisfy fairness tests for employees and employers, provide protection from industrial action during the term of agreement and the ability to legitimately provide an alternate to the operation of the relevant award). Recognition of alternate collective agreements would allow employees to vote to decide which arrangement to access.</p> <p>Individual arrangements alongside collective agreements:</p> <p>The ability to make individual arrangements recognises that not all employees are suited to the sometimes limiting terms of enterprise agreements and that the option to negotiate flexible arrangements in respect of hours of work, rates of pay, application of shift loading and other penalty entitlements can be mutually beneficial to both employer and employee. The individual flexibility arrangements (IFA) provisions of the Act in theory provide such an avenue, however it is Manufacturing Australia’s experience that such provisions are very seldom used. The primary reason for this low take-up is that the ability of an employee to unilaterally terminate the arrangements on four weeks’ notice makes the arrangements of little value to the employer. This perception of limited value has in turn made employers less likely to resist union claims to severely limit the subject matter capable of being varied by the IFA.</p> <p>Manufacturing Australia believes IFAs should be recast to make them meaningful. MA proposes that such arrangements should not be capable of unilateral termination until the applicable enterprise agreement has expired (or until a new enterprise agreement is approved). Further, the terms that are capable of being the subject matter of an IFA, as a minimum, should be the model term in the Act.</p>
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Recommendation 5:
*Unions should be required to **sign a statutory declaration** in relation to the number of members it represents in a given negotiation.*

<p>Summary</p>	<p>Manufacturing Australia believes that an employer is entitled to know how many of its employees are being represented by a union during bargaining.</p> <p>Under the current legislative arrangements, it is not possible to determine the extent of union representation. At no point is the union required to disclose the numbers of members it represents. It is only in the event of a protected action ballot process that it becomes clear how many members the union has.</p> <p>Accurately understanding the interests of employees will enable more efficient bargaining. Currently, union representation may be overestimated and union positions on bargaining claims may not reflect the views of the majority of employees. This has the potential to lead to unnecessarily protracted negotiations in a number of ways. For example, the majority of employees may be prepared to accept an earlier proposal that has been rejected by the union minority bargaining representative or, alternatively, may lead to proposed agreements endorsed by a union minority being rejected by the majority of employees.</p> <p>Manufacturing Australia proposes that when a union identifies itself as a bargaining representative, it must provide a statutory declaration to the employer disclosing the number of members it has that are to be covered by the proposed enterprise agreement (as described in the Notice of Employee Representational Rights).</p>
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