

If this inquiry is held and run in a genuinely objective and bipartisan way, it could be beneficial to the country and successive governments for many years to come. This is why I hope some of the little biases and subtle political influences/agendas in the issue papers are an accident. For example:

1) In paper 5, there is a statement about most sham contracting arrangements being not deliberate and relating to bureaucracy, without any supporting evidence or facts (this appears like an attempt to play down the problem). Anecdotal evidence from unions is quite the contrary; they suggest sham contracting is largely deliberate in an attempt to deny employees entitlements (which makes logical sense). Making an objective effort to determine the extent of sham contracting and how deliberate these arrangements are would be helpful.

2) There is mention of the increased flexibility associated with labour hire arrangements. This may be true, but the issues papers ignore the ambiguity of triangular employment arrangements (or speak in vague theoretical terms) which are widely acknowledged by labour law experts to create imbalance in the employment relationship, and again deny employees entitlements. See for example the paper Quinlan, Bohle and Rawlings-Way 2014.

3) Pattern bargaining is discussed as being illegal, and makes it sound like only employee groups may engage in this. Is there any evidence to say that employer groups do not also engage in this behaviour? For example what about APS bargaining?

Onto more general discussion, there are several things I would like to raise. Many of these fall under the umbrella of complexity in the system.

1) The FWA doesn't define terms such as casual, and the Independent Contractors Act doesn't define an independent contractor! This creates all sorts of ambiguity which can be exploited in various situations (for reasons such as taxation or employee entitlements). However definitions would need to translate (at least closely) to common law interpretations of these terms. And I acknowledge this is extremely difficult given the complexity of this common law.

2) It would create efficiencies to have all employees under the same system. This would help to provide the same rules for all jurisdictions and avoid red tape. Also, it would be even further improved if things like long service leave were the same for all jurisdictions. This would obviously be difficult in the short term (some winners and losers etc) but transition arrangements, eg old employees keep old entitlements but new employees hired under new unified system rules could make it work.

3) I haven't made a huge effort to understand it but what is the difference between the FWC and FWO? Why two separate organisations? Seems like duplication or extra bureaucracy, and means it is not necessarily obvious for people to go to for people seeking their services.

Many other things I would like to raise fall under the theme of the employer employee balance:

1) These days under the FWA, employees not in a union are without representation in practical terms (even if they can theoretically represent themselves). For example they cannot legally take

part in industrial action, or advocate their position effectively in negotiations with employers. Whilst I am not suggesting compulsory membership or anything like that, I believe attention should be given to finding ways to potentially address this imbalance. I don't have any specific ideas on this which are better than what has happened in the past; allowing non-union members participation in union led action like in the past is an option to address this, with some theoretical downsides.

2) There should be greater effort to investigate and prevent illegal arrangements (there are reasons why they are against the law). Perhaps there should be statutory obligations and deadlines for sufficient levels of complaint follow up and where appropriate, action.

3) There is a (rightly) large emphasis on productivity especially in the context of bargaining, but no mention of inflation. Pay changes should relate to both. And in most cases, productivity at the individual employee level is about performing competently, which could be more explicit. Productivity at large is more about management practices. Management is known for being of a low standard in Australia compared to other countries (see for example the paper Loomes 2014), and it is management's job to find productivity improvements. Perhaps management performance should somehow form part of the narrative in terms of bargaining? After all, it is not individual public service employees who angst about where to put commas in their written work. And it is not low levels in the private sector who rent out a yacht, host "dignitaries" (really mates) and sail around Sydney harbour billing the company.

4) There needs to be more awareness by both employers and employees of both their rights and obligations. Many employees are unaware of their rights, which can be tantamount to not having them. It should be illegal (with severe, practically enforceable penalties and efficient processes for doing so) for employers to provide inaccurate or prejudicial advice to their employees.

I would like to raise two more things generally. The first is about company structures, which are often so complex as to obstruct due processes. This can be used to cover up illegal activity (such as deny employees entitlements or more generally, funnel money and avoid tax or declare bankruptcy etc). For example, a worker is hired by company A; company A is owned by company B, company B is owned by companies C through Z jointly, and these companies are owned by company AA. Company A declares bankruptcy before paying its workers, company B paid company A trivial amount for the "services" that company A provided, and companies C through Z have nothing to do with company A, even though the overall ownership is centralised. Company structures should either not be allowed to be unnecessarily complex (which doesn't seem appropriate as enterprises should be allowed to structure in the best way possible for legitimate purposes), or these complexities should not be allowed to be used to break the law. That is, companies should be held liable for their legal obligations (including employee entitlements, and others not so relevant to this inquiry, eg tax) regardless of their structure (that is, company AA should be liable). Really, sham contracting or vague triangular arrangements are in some ways specific examples of the overall complex company structure situation.

The final issue I would like to raise is that of 457 visas. These are supposed to be for skilled workers. There is anecdotal evidence of 457 visas being used for non-skilled workers to pay lower wages. For example, housekeepers shouldn't be brought in on these visas, but they are. If Australian workers will not work for the award, this means employers should raise their wage above the award to be competitive, that is how markets normally work. Employers shouldn't be able to bring in labour which is prepared to work for non-market wages due to entrenched disadvantage in their home countries. One of the fundamental pillars of a first world country is a relatively higher wage. One of the common traits across the third world is that labour is cheap or free.

Thanks for your attention. I hope this inquiry can take all the relevant factors into account and generate genuine reforms which benefit everyone for the years ahead.