

SUBMISSION TO THE PRODUCTIVITY COMMISSION

Name: Keith Hancock

Present Appointments

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Disclosure

- I was Chairman of the Committee of Review of Industrial Relations Law and Systems, which reported to the Commonwealth Government in April 1985.
- I was appointed in 1987 as a Deputy President of the Australian Conciliation and Arbitration Commission. I subsequently became a Deputy President and Senior Deputy President of the Australian Industrial Relations Commission. I retired in 1997.
- My wife, Sue Richardson, is a part-time member of the Expert Panel of the Fair Work Commission.

Submission

I have read the issues papers and congratulate the Commission on their comprehensiveness and their erudition. Because of my personal circumstances, I cannot make a submission by 13 March which responds to many of the pertinent questions raised in the papers. I wish, however, to draw attention to two of my own publications which seem relevant to the Commission's task and to add some brief further comments.

One publication is the paper 'Labour Market Deregulation in Australia', which is Chapter 2 in Sue Richardson (ed), *Reshaping the Labour Market:: Regulation, Efficiency and Equality in Australia*, CUP 1999, pp 38-85, especially pp 48-62. The Commission is well aware that the labour market has attributes that distinguish it from most (if not all) other markets. My paper reinforces this point. It demonstrates, I believe, that the need for regulation is embedded in the character of the market.

If the Commission does not have easy access to this paper, I am happy to send a copy. The Commission may very well find that other chapters in the edited volume are helpful to it.

The other publication is 'Enterprise Bargaining and Productivity'. This was originally a paper presented to a conference held on 5 November 2011. It was subsequently published in *Labour and Industry*, vol 22, May 2012, pp 289-302. Unfortunately, however, most of the diagrams were miss-set in that version. A corrected version was placed on the journal's website. For the Commission's convenience, I am sending, along with this submission, a

copy of the corrected version. It goes to the issue, raised by the Commission, of the effect of industrial relations arrangements on productivity, concluding that the move to enterprise bargaining had little or no effect.

The Commission has raised the obviously important question whether minimum wages have adverse effects on employment and unemployment. As the Commission knows, there is now a vast literature on this issue. Much, but not all, of it was instigated by David Card and Alan B Krueger, *Myth and Measurement: The New Economics of the Minimum Wage*, Princeton University Press, 1995. At the time when the Committee of Review of Industrial Relations Law and Systems was deliberating, very little of this literature existed. The Committee discussed generally whether more 'flexible' wages than the award system provided were necessary for the efficient operation of the labour market. It took note of one significant 'experiment'. This was the introduction of 'equal pay' for women in the early 1970s. So far as could be told from the employment statistics, this had no adverse effect on the relative employment prospects of women. (The Committee's discussion is in Appendix II, Vol 3, of its report.)

The Committee quoted a finding by R G Gregory and R C Duncan about the relative employment experiences of four groups—adult males, adult females, junior males and junior females:

The relationship between the change in wage relativities between the groups and the performance of employment is very confused. Institutionally determined wage changes alone cannot explain the changing employment patterns. Adult male employment, which should have been favoured by the changes in relativities, has grown least and adult female employment, which has been subject to the largest increase in wage relativities, has grown most. Junior male employment has done considerably better than junior female employment and this is consistent with the fact that junior females have increased their wages relative to junior males. This evidence does not disprove that the relative wage changes have affected the demand for labour in the expected way, but, if they have, it has to be conceded that other influences in the opposite direction—particularly in respect of adult males—have been more important. ('Employment, Unemployment and Income Effects of Relative Wage Changes', in Keith Hancock (ed), *Incomes Policy in Australia*, Harcourt Brace Jovanovich, 1981, pp 307-308)

I do not assert that wage increases would never reduce employment. For reasons given in the former of the two papers cited above, however, I would contend that over a significant range wage levels are a minor determinant of employment.

The Committee of Review's recommendations, which were largely incorporated in the *Industrial Relations Act 1988*, envisaged the continuance of conciliation and arbitration as

the primary vehicle for regulating the terms of employment. This policy was overturned, as the Commission is aware, in the early 1990s. Instead, the decision was made to rely upon collective bargaining at the enterprise level as the principal method of adjusting wages and conditions. This has been supplemented by the maintenance of award terms as a 'safety net' which operates as a floor to bargained outcomes and a protection to groups of employees who do not enjoy the benefits of bargaining. I was a member of the Full Bench of the Australian Industrial Relations Commission which in April 1991 initially rejected the proposal to move to enterprise bargaining. Along with other members of the Bench,

- I thought that the proposal carried the risk of wage 'breakouts' such as had occurred in the 1970s and early 1980s;
- I was sceptical of the claim that enterprise bargaining would generate a higher level and rate of growth of productivity; and
- I was apprehensive that enterprise bargaining would cause differences in wage relativities that had no warrant in efficiency or equity, but merely reflected relative bargaining strengths. I shared the (then) long-standing view of the tribunal that the fruits of productivity advance should, so far as possible, be spread across the labour force and not concentrated upon segments of it.

It is now clear that the first of these concerns has not been realised. At the time, I did not foresee the decline in union membership which has reduced the ability of unions to enforce wage rounds of the kind that characterised the early 1970s and early 1980s. Nor did I foresee the extent to which the opening of the economy to foreign competition would impact on the ability of unions to enforce wage demands.

The second concern has, I think, been vindicated. The effect of enterprise bargaining on productivity is discussed in the latter of the two papers mentioned above, and I do not add to what I have said there.

The third concern has also been vindicated. Bargained wages are higher and have grown faster than safety net wages. My colleague Dr Joshua Healy has kindly given me the table below, which is derived from the ABS Survey of Employee Earnings and Hours. It shows that wages under collective agreements not only are much higher than under awards, but have also been growing faster. It is well known that strong unions in mining and the maritime industry have extracted especially large wage increases. They have, of course, been aided by the level of demand for labour, especially in mining, but union strength has reinforced the forces of the market. Public-sector unions, which have been more successful than private-sector unions in maintaining membership, have secured greater increases in benefits than have been typical in the private sector.

| Method of setting pay | \$ in 2000 | \$ in 2014 | % change |
|-----------------------|------------|------------|----------|
| Award only | 626.80 | 1143.00 | 82 |
| Collective agreement | 860.80 | 1617.20 | 88 |
| Individual agreement | 760.50 | 1512.50 | 99 |
| Total, All methods | 783.50 | 1509.30 | 93 |

Sources: Australian Bureau of Statistics (ABS) (2001), *Employee Earnings and Hours, Australia, May 2000*, Cat. no. 6306.0, Table 31; Australian Bureau of Statistics (ABS) (2015), *Employee Earnings and Hours, Australia, May 2014*, Cat. no. 6306.0, Data cube 8.

It is not, of course, practicable or desirable to revert to the pre-1991 arrangement wherein the potentially and actually damaging effects of industry bargaining were kept in check to a degree by specific arrangements such as The Accord or, more generally, by the conciliation and arbitration system. I would, however, urge the Commission

- to avoid recommendations which entail enhancement of the role of bargaining and to recommend the removal from the legislation of provisions which specifically promote bargaining; and
- to emphasise the importance of maintaining and improving the safety net.

In relation to the former, I am conscious that the Commission will be in receipt of submissions which argue that collective bargaining, supplemented if necessary by industrial action, is a fundamental labour right—a corollary, indeed, of ‘freedom of association’. I respectfully disagree. The freedom of workers to join unions and the freedom of unions to advocate on their behalf are not, I trust, in dispute. Like other interest groups, unions are and should be able to persuade policy makers to make decisions favourable to their members’ interests. They should also have the right of consultation with employers and a right to protect their members against unfair treatment (including unfair dismissal). It does not follow that they should be encouraged or aided to *enforce* their demands by strikes and other forms of industrial action. It may well be true that without such methods of enforcement heavily-unionised segments of the workforce will not fare as well relatively to other segments as they have done in the past. That, I submit, would not be a bad outcome. The ability to mount effective industrial action is uncorrelated with inter-worker equity. Various provisions of the Act explicitly or implicitly favour collective bargaining. S134 (1) (b) (b), for example, requires the FWC, in making modern awards, to take into account ‘the need to encourage collective bargaining’. Such provisions should be repealed.

My latter point is closely related. The safety net, which does not discriminate between workers on the basis of their bargaining strength, should be vigorously maintained and improved. There has, I think, been a widespread assumption since 1991 that bargained

wages and conditions should move ahead of the safety net—the terminology probably implies as much. That assumption should be explicitly abandoned. Wage policy should lean toward the equitable sharing of the fruits of economic advance. This is not to advocate a rigid wage structure. Variations in relativities which reflect supply-and-demand forces should be allowed, subject to the enforcement of the safety net. But variations due to differences in collective strength involve a quite different discriminator.

I should like to add that the ill-effects of collective bargaining are exacerbated by the emphasis on *enterprise* bargaining and the discouragement of *pattern* bargaining. Pattern bargaining implies *some* degree of generalisation of the benefits of productivity growth. As I argue in the second of the two cited papers, there is little evidence that the introduction of enterprise bargaining has had favourable effects on productivity, the growth of which is overwhelmingly the product of investment in physical and human capital and technical progress. In comparison with pattern bargaining, bargaining which is confined to individual enterprises facilitates the continued existence of inefficient producers and militates against the fair distribution of the benefits of productivity growth. Inasmuch as enterprise bargaining leads to lower wages being paid by less profitable employers than by others, it encourages a misallocation of labour, just as there would be a misuse of resources if the prices of other inputs such as material and fuel varied with the profitability of the users.

Given the Commission's awareness of many of the special features of the labour market, I am confident that it will see the wisdom of avoiding proposals which imply that the determination of employment terms should simply be left to 'the market'. Workers must be protected against both the power of employers and the ability of strong unions to alter the distribution of income in favour of privileged sectors of the labour force. Those who question the importance of the latter should perhaps reflect on the extraordinary advantages of air pilots before 1989, when their union finally overplayed its hand.