

## **Workplace Relations Framework:**

### **Introduction:**

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The Vintage Reds of the Canberra Region are the Retired Progressive Trade Unionists. As a group, we have only been in existence for a little over eighteen months and we already have nearly one hundred members. Our members have continued to maintain their commitment to the principles of trade unionism and to the trade union movement as an important part of Australia's social fabric.

The Vintage Reds are committed to pursuing union related matters by:-

- Publicly promoting and supporting trade unionism;
- Promoting the interests of trade unionism and of retired unionists particularly in regards to Government policies and practices;
- Providing forums for political discussion and camaraderie.

The Vintage Reds also pursue:-

- a system of fair wages and conditions of employment for all people working in Australia;
- a fairer federal budget and taxation system;
- we encourage voter registration and participation ; and
- the maintenance of the national public infrastructure.

We commend the Vintage Reds submission to the Productivity Commission Review of the Workplace Relations Framework Inquiry.

Areas where we have not commented, we rely upon the Australian Council of Trade Unions (ACTU) and their submission.

**The Inquiry in Context:**

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In regards to this issues paper we make the following comments.

**Scope:**

1. The Vintage Reds welcomes the commitment of the Productivity Commission to consider the human and social as well as economic impacts of the Workplace Relations Framework (WRF). They are essential considerations. As Issues Paper 1 notes, the framework affects the working lives of the many Australians who work in some form of employment during their lifetime.
2. ABS Household Income and Expenditure Surveys show that, for most individuals and families, income from work is a major source of financial support over the course of their lives.
3. Securing fair and decent pay, having fair employment conditions, safe and healthy workplaces, and opportunities to voice and redress grievances are important determinants of the quality of life we have and make for our families, as well as national living standards, wealth and a just society.
4. As work makes up a very large part of how we spend our adult lives, our sense of dignity (self-worth and self-respect), and social and mental wellbeing are influenced by the work we do and how we are treated in the workplace.
5. Until now, Australia has enjoyed a standard of living which is the envy of the rest of the world; including other first world countries. It is our economic and social environments, our built and our natural environments which have provided us with a clean, safe and orderly world where we have brought up our children to enjoy the benefits of previous generations.
6. This world includes our industrial relations system; a system built over the past century which has provided citizens with a conciliation and arbitration tribunal, equal pay and pay equity for women workers, a living wage, superannuation, workers compensation, annual leave, and sick leave to mention but a few conditions.
7. To have to provide to this Review (and within a short time frame) a rational and justification for the retention of shift loadings, penalty rates for weekend work, employment standards, minimum wages, beggars belief!
8. All the reasons why Australia is a first world country are for these many and varied reasons. To remove them will be to destroy our infrastructure which has protected workers as well as employers.

9. In the New York Times on 19 February 2015, Nicholas Kristof reported in awkward American language, viz:- *“Most studies suggest that about one-fifth of the increase in economic inequality in America among men in recent decades is the result of the decline in unions. It may be more: [A study in the American Sociological Review](#), using the broadest methodology, estimates that the decline of unions may account for one-third of the rise of inequality among men”*.
10. Also recently, The Guardian: Australian Edition, 17 February 2015 reported on the study by Joanna Mack with the frank and fearless title How to Eradicate Poverty: Spend More on Wages and Strengthen Unions. In short Mack states, *“The findings of our four Breadline Britain, and [Poverty](#) and Social Exclusion, surveys since 1983 show that poverty in the UK is at a 30-year high. The rise is not explained by a sudden explosion of a culture of poverty, nor by out-of-control benefits. Rather, it is because of a surge in the numbers of working poor. It’s about the way that the politically driven shift in power from the workforce to corporations has shrunk the share of the cake going to the bottom half of the labour force, leaving growing numbers at the mercy of low-pay, zero-hours and insecure contracts.”* This will be the situation in Australia should this Inquiry recommend that we continue to cut the infrastructure that provides a minimum wages and remove all of our social wage standards.

**Providing Safety Nets:**

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The Vintage Reds do not have the resources to respond to any matters raised in this issues paper.

**The Bargaining Framework:**

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In regards to this issues paper we make the following comments.

**Limited Conciliation and Arbitration**

1. The Vintage Reds submit that the Fair Work Act 2009 has brought about an unfortunate diminution in the Commission's powers to conciliate and to arbitrate, particularly the latter.
2. The Issues Papers give this situation scant recognition. In Issues Paper No. 3 under the heading of 'limited conciliation and arbitration' the paper refers only to the Commission's powers to impose an outcome by way of compulsory arbitration in respect of enterprise bargaining.
3. Whilst those limitations can be understood in that particular context, there are many other areas of the Commission's jurisdiction where the current Act severely limits the Commission's ability to arbitrate.
4. We refer to Sections 595 and 739 of the Act. Essentially the Commission may only arbitrate to settle an industrial dispute if the parties all agree that it may do so.
5. This in effect means that unless the Commission has been able to settle a dispute by mediation, conciliation, making a recommendation or expressing an opinion, the dispute remains unresolved, potentially leading to discontent, low morale and further conflict at the workplace.
6. The situation hardly assists in the productivity and competitiveness of commerce and industry (see Section 3, Objects of this Act).
7. We submit that the well known principle of the 'shadow of arbitration' applies in the settlement of many disputes, on the basis that the parties know that arbitration will follow if conciliation fails.
8. We would therefore propose that the Act should be amended by removing all impediments to the ability of the Commission to arbitrate in any dispute which is unresolved by conciliation or similar means.

## Requirements to Consider Productivity Improvements

### Labour is an Investment – Not just a Cost:

1. The Vintage Reds are saddened by the tone of some of the discussion, in particular, the way some parties and commentators appear to view employees and their labour as just another commodity and cost subject to the laws of supply and demand. This is a simplistic and short sighted view.
2. In short, productivity concerns many other factors besides the cost of labour. Productivity includes capital investment into plant and equipment, the renewal of plant and equipment, land purchase or lease, resources required to produce goods or services, and markets for the goods and services.
3. Employees are also consumers, making up the domestic market for the goods and services provided by Australian businesses and on which their livelihood and survival depend. They are taxpayers and investors.
4. Employees have lives outside work and balancing work with family and other responsibilities are key priorities. Smart businesses who recognise that their employees/staff are vital to their success, invest in them accordingly.
5. We would therefore urge the Review to consider employees as people and not a commodity for companies to exploit.

The Vintage Reds do not have the resources to respond to any matters raised in this issues paper.

In regards to this issues paper we make the following comments.

**Overview:**

1. The Vintage Reds are concerned that with regards to the Terms of Reference for this particular Review and the Objectives of the Fair Work Act 2009 that the Government may have lost “their moral compass” with regard to their responsibility to the most vulnerable Australians and guest workers in the country.
2. We therefore make specific reference to some of those vulnerable groups in regards to some matters we have identified in the time available to our limited resources and our voluntary members.

**Small Business:**

1. The Vintage Reds recognise that small business has a major role to play in the economy as both an employer and provider of goods and services.
2. We also recognise that small business and their organisations are the largest group to be pushing for reform to lessen employee wages and conditions, including doing away with weekend and public holiday penalty rates. This is especially true with regard to the hospitality industry and to a slightly lesser extent the retail industry.
3. We asks the Review to consider that it is small business who have the worst records for underpayment of staff and the poorest reputation for unfair dismissal especially for those employees who are coming off youth pay rates to adult rates (at the of age of 18 years). Many of these young and venerable workers are not unionised and with the demise of State based industrial commissions and inspectorates, and the under-funded and understaffed Fair Work Australia having responsibility for policing wages and conditions, there is little chance of a quick response to any complaints about the wages, conditions or dismissal.
4. We therefore asked that the Review recommends that Fair Work Australia be funded to ensure that it can staff itself to the degree necessary to be able to answer complaints from employees who feel that they have been exploited by their employer.
5. We also asked you to consider the full economic circumstances if penalty rates were reduced or abandoned altogether. Will small business be able to find staff at weekends to staff to work? Why would a young person give up their weekend or public holiday to work for a minimum pay rate?
6. If they do work, as many do, mainly at weekends then their spending power will be reduced therefore, meaning that their input into the overall economy will be sustainably less, which will see loss of employment and out of business signs



growing, thus defeating the whole reason for stopping penalty rates – to supposedly create more employment opportunities for all.

7. The Vintage Reds can find no reason to support any business, small, medium or large to be exempt from the unfair dismissal legislation. There seems to be very little convincing argument that business should be exempt to legislation that protects exploited employees.

### **Sponsored Foreign Workers: 457 Visas: the Devil is truly in the Detail!**

1. The Vintage Reds recognise that an orderly migration program has contributed to the economic life of this country and its workplaces, and we are all beneficiaries.
2. We are concerned however that the government's attention has become focused on so-called "border security" at the expense of other migration issues. The oversight of the 457 visa program has suffered, with unacceptable numbers of problems reported.
3. The Vintage Reds are critical of the abuses of the current 457 visa scheme by many individual employers; and the failure of Governments to properly manage the scheme. 457 visa holders who find themselves in a dubious situation without a trade union usually have nowhere to report their experiences.
4. Last year's leaked report from the Fair Work Ombudsman confirmed as widespread the reported failures of the 457 visa scheme. Insufficiently regulated sponsorship of workers under this scheme has resulted in the following problems:
  - a. the numbers of workers arriving are more than applied for;
  - b. low levels of English put workers' lives at risk;
  - c. far from being trained by employers as required, many receive no training;
  - d. some workers arrive ready to practise their skilled trade but are put to work at a job with lower skill levels and pay;
  - e. the requirement to ensure an actual shortage of skilled labour in the field before looking off-shore appears to be frequently ignored;
  - f. many workers are vulnerable and unaware of their rights (or are actually expecting some degree of rule-bending), and are short-changed on working conditions and pay;
  - g. significant numbers of workers were found to have overstayed their visas;
  - h. entry has been approved to workers in areas such as hospitality and teaching, when there is already a glut of local workers looking for jobs in these areas.<sup>1</sup>
5. The Vintage Reds note that the Government does not appear to properly regulate or update the Skilled Shortage Occupation Lists. Bottlenecks and slow processing times result in an oversupply of migrants with skills no longer required. We are at a loss to

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<sup>1</sup> <http://www.smh.com.au/federal-politics/political-news/foreign-teachers-on-457-visas-worsen-graduate-glut-20141020-118x9m.html>

understand how the reported 457 visa holders working at a local carwash in Canberra in 2014 can have been a case of “local market skills shortage”.<sup>2</sup>

6. We are disturbed to hear of many cases where employers prefer to bring in 457 visa workers rather than devote existing staff to training new generations of recently qualified local workers. There is a proper expectation that employers will, minimally, contribute to the community by providing training and experience to workers.
7. Robbing third world countries of their trained staff because Australian Governments and Australian industries are not interested in training domestic employees is a short-term solution with serious long-term implications for many. We do not believe it is right to for Australia to profit in this way from these countries' commitment of their resources to training.
8. The Vintage Reds see problems with oversight of the 457 visa program to be evidence of the government's distancing itself from its responsibility to all working people to maintain and improve working conditions and pay levels, and to take measures to make employment available to all who want to work.
9. The proposed 12-month “mobility” visa, with none of the protective conditions concerning pay, conditions, training, or the local availability of suitable staff, would entrench the worst features of the 457 system.
10. The Vintage Reds call for a return to a bipartisan policy on migration, with both unions and business interests consulted. This would be far preferable to the existing state of affairs, where domestic vote-chasing on immigration shames both major political parties and contributes to neglect of important migration policy. The 457 visa program requires proper management if it is not to deteriorate into a system where the interests of visa holders as well as the job prospects of Australian job-seekers are sacrificed to some employers' greed and short-sightedness.

## **Women Workers**

1. Women have fought every inch of the way since the establishment of British colonies in Australia to have their voice heard, to gain recognition and to be given access to those rights and privileges enjoyed by men in the workforce. It is only with a commitment from Government with a strong industrial relations infrastructure that these rights will be extended to all women.
2. Whilst ever women remain as the principle carers of children in Australian society, there will remain a pay gap between men's and women's income unless the Australian Government actively intervenes to redress this situation.
3. The introduction of a paid maternity leave system has certainly been welcomed by the majority of Australians concerned about the issue of women returning to work and balancing a healthy happy family situation.
4. When we look further into women's work and women's pay and employment circumstances there is a vast amount of academic research which continues to say that Australian women workers are not treated the same as their male counterparts

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<sup>2</sup> “Leaked report raises concerns over 457 visas”, Heath Aston, SMH, Oct 19, 2014

and that their opportunities at work are truncated by their family based responsibilities.

5. The Fair Work Commission has also researched the question of Pay Equity as part of their responsibilities under the Act; and the Australian Centre for Industrial Relations Research and Teaching released a further paper in 2014 by Suzanne Hammond.
6. The Vintage Reds will not only rely upon the ACTU with regards to the plight of women workers in Australia when addressing the workplace framework; we also rely on a number of women's organisations such as the National Foundation of Australian Women and Economic Security for Women.
7. In short, we are firmly of the view that it is only possible for Australian women to improve their circumstances in the workforce if there is an industrial relation structure (ie Fair Work Australia) who are charged with examining this cultural anomaly and are able to redress the situation of women workers. For this matter to be progressed it will require amendments to the Act.

### **Apprenticeships and Traineeships:**

1. The Vintage Reds raise a number of concerns in regard to the current situation for apprenticeships and trainees of the Australian workforce and respectfully asks the Review to consider the following and to make the necessary recommendations to ensure that the Australian workforce is well trained and ready to meet the future demands of our workplaces.
2. The training of apprentices and trainees that has evolved since the industrial revolution has been supported by Australian employers, unions and governments. This has ensured Australia has had a constant supply of training places and an opportunity for young workers to be trained in their chosen discipline. The process has also been carefully managed by the Fair Work Australia and its predecessors.
3. Unfortunately, in the process of change and renewal (which we are not opposed to) the responsibility for training by employers with government support has been evaporating at an alarming rate. It is our view that the general population are also alarmed at the disappearance of apprenticeships and traineeships from the workforce and the public arena.
4. Furthermore, the removal of public sector training from across state public sectors (eg NSW Railways or SA Public Works Department) and other training frequently funded by the state and/or Commonwealth Governments has been drastically reduced. In the past those workers who have completed their apprenticeships or other relevant training often then move into private sector employment.
5. The failure of Governments to take responsibility for apprenticeships and traineeships has lead to a serious shortage of many skilled vocations and this shortage has often been taken up by 457 visa holders. This is not a healthy long term objective. The Vintage Reds have already provided a critique about the 457 visa scheme.
6. We are alarmed at the gross reductions in funding for the TAFE system and are further concerned at the current reports of private sector training operators rorting the Commonwealth funded programs.

7. The Vintage Reds see as necessary for the Government to renew a tripartite agreement for apprenticeships and traineeships and a role for FWA to assist the parties in regards to employment rights and recognition of skills.
8. One of our members reported that they had seen an apprentice terminated just one month before the completion of their apprenticeship contract. There was no independent body overseeing the apprenticeship. This apprentice had been used as cheap labour for years.

## **Precarious Employment**

1. According to Professor Rosemary Owen from Adelaide University precarious employment is associated with “*part-time employment, self employment, fixed term work, temporary work, on-call work, home based workers and telecommuting*”. This is an area where women are over represented.
2. Most studies suggest that precarious employment is a result of the reduction in unionisation of the workforce, the movement of manufacturing jobs off-shore, the growth of service industries and cyber technology.
3. In Australia, precarious workers are a new underclass, they are usually poorly paid, have no job security, and are isolated. These workers can miss out on a range of benefits including superannuation, workers compensation, accumulated leave, overtime and economic adjustments of wages. These are the most disadvantaged of all workers and most are unable to support themselves or their families.
4. The situation of precarious work can be repaired should this Review decide to make recommendations that will protect the worse off and the most vulnerable citizens. We therefore respectfully suggest that FWA should examine the matter of Precarious Employment in Australia.

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