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Is industrial relations reform the road to recovery in monopsonistic labour markets? ¹

David Peetz ²

The proven path for paying back debt is...by growing the economy through productivity enhancing reforms. Our focus will be on practical solutions to the most significant challenges [with]... industrial relations reform as a means of increasing our competitiveness.

So spoke the Australian Treasurer on 12 May 2020, identifying ‘industrial relations reform’ as central to recovery from the COVID-19 pandemic (Frydenberg, 2020). To reinforce his message, in July he twice referred to, as inspirational, the policies of Ronald Reagan and Margaret Thatcher (Bonyhady and Duke, 2020; Brinsden, 2020), possibly the Western leaders seen to have done the most to weaken unions (Ghilarducci, 1986). In November, his government introduced industrial relations (IR) legislation including, as part of its title, ‘Supporting Australia's Jobs and Economic Recovery’. But how useful is such an agenda in seeking recovery?

The focus of this article is on the national IR public policy aspects of the recovery agenda in Australia. How did the national IR policy agenda react to the crisis, and how well formulated was the response? In particular, could this agenda promote economic recovery

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through higher employment and labour productivity? As it was, the agenda was only partially implemented, as the legislation was amended on its way through Parliament, prompting the Prime Minister to complain that there are ‘many in the Senate...who don’t share my passion for creating jobs’ (Coorey and Marin-Guzman, 2021). Employers lamented the failure of the Bill and said ‘further efforts need to be made over the months ahead to secure support’ for its unfinished reforms (Lambert et al., 2021). The politics of reform are not the main focus here. Instead, this article centres on the substantive areas proposed for IR reform in recovery from the pandemic and how that agenda for IR reform could plausibly shape future labour productivity and employment growth. What was rejected in 2020 in 2021 could be reintroduced later. Key to assessing that agenda is a modern appreciation of how labour markets operate and shape decisions that influence employment and labour productivity. Central to this are recent developments theorising the role of monopsony in labour markets. So we first turn to some theoretical issues regarding monopsonistic labour markets, employment and labour productivity.

A brief consideration of theory

Monopsonistic competition and employment

Decades ago, it was conventional wisdom that lower wages led to higher employment, by making it cheaper to hire additional workers. The publication of *Myth and Measurement* by Card and Krueger (1995) was the first major challenge to this orthodoxy, making use both of recent American empirical evidence, including a two-state ‘natural experiment’ on minimum wage increases, and the theory of monopsony in labour markets. Since then, the

evidence has swung quite substantially. There is little recent evidence that cutting minimum wages and conditions would boost employment (Bishop, 2018). Likewise, although long debated in labour economic circles, it is now doubtful that minimum wage increases damage economic performance (Winkler, 2019). In Britain, steady increases in the national minimum wage appear to have had no adverse employment effects (Metcalf, 2008).

What is monopsony? The key concept is of employer discretion. Analogous to a monopolist firm in concentrated product markets, a monopsonist firm in a concentrated labour market can lower wages below a 'market clearing' level. Employers do not pay a uniform single wage rate, they have a choice, within bounds, as to what wages they pay (Manning, 2003). If they pay a lower wage they will have more vacancies and probably lower quality labour. If they pay a higher wage they will have fewer vacancies, higher quality labour, fewer product defects and higher labour costs. What they choose depends on what market niche they're aiming for with their products, their personal preferences and beliefs and their tolerance for vacancies. What the monopsonistic firm loses in reduced output and revenue, it may more than make up in reduced labour costs (Council of Economic Advisers, 2016).

Most labour markets are not be characterised by pure monopsony, but best described as manifesting 'monopsonistic competition', with features ranging from normal search frictions to active employer collusion against competition (Krueger and Posner, 2018).

There is nothing new about employer collusion to push down wages: Adam Smith wrote of how 'Masters are always and everywhere in a sort of tacit, but constant and uniform, combination, not to raise the wages of labour above their actual rate' (Smith, 1776). Recent

examples include agreements between Silicon Valley firms not to poach each others' workers, similar arrangements between or within US restaurant chains, agreements between entertainment firms not to poach each others' animators, and cases involving nurses in some American states (Krueger, 2018). Even without collusion, there are plenty of search frictions (Economic Sciences Prize Committee, 2010). Workers cannot move jobs seamlessly. There are opportunity costs to job search. Moving homes is usually expensive, sometimes out of the question. Transport costs or times may put many alternative jobs out of viable reach. Some vacancies are not seen. Some involve unsuitable working hours. There might be difficulties accessing childcare. The present workplace may have congenial colleagues not guaranteed elsewhere.

All these things are barriers to workers' likelihood of leaving a job for a better paid one elsewhere, and act to increase employer opportunities to lower wages below a perfect-competition market-clearing level. A firm paying slightly below some average wage would still have workers and so there is no single 'going wage' (just a range of plausible offers) (Krueger, 2018). Hence neighbouring firms, paying different wages, may simultaneously experience labour shortages and labour surpluses (Peetz, 1998).

There is ample evidence that monopsonistic competition, rather than perfect competition, is the rule in labour markets. Observers see no single wage for a specific type of labour, but instead considerable dispersion, even for people with similar skills doing similar jobs.

Second, differences in pay rates received by men and women, and by people of different racial or ethnic backgrounds, even in the same job and between workers with similar labour productivity, would not occur in a perfectly competitive market (Brosnan, 1996). Laws, not

perfectly competitive markets, act to end this discrimination in pay. Third, 'skills shortages' reflect the inability of wages to adjust as if in perfectly competitive markets, since employers resist raising wages to overcome them. A contemporary example is the reluctance of employers in agriculture to raise wages or change labour hire arrangements to attract labour, despite a 'labour shortage' (Sullivan, 2020; Robinson and Felton-Taylor, 2021). Hospitality employers claim a labour shortage despite recently succeeding in reducing penalty rates (Lambert, 2020). Fourth, despite the predictions of the perfect competition model that employers will not pay for any general training, firms often choose to pay for general training. Fifth, empirical estimates of the impact of minimum wage laws, mentioned above, do not support the perfectly competitive model. Sixth, empirical estimates of the elasticity of labour supply are well below 1.0, whereas in the perfectly competitive model elasticity should be infinite, as a firm loses all its workers if it drops wages below the going rate (Booth and Katic, 2010). Seventh, there is evidence of monopsony effects on wages. In one study, movement from a labour market on the 25th percentile of concentration to one on the 75th percentile was associated with a 17 per cent decline in advertised wages (Marinescu et al., 2019).

Monopsonistic characteristics in labour markets appear to be increasing. An Austrian study suggests that just one aspect of it accounts for two fifths of the decline in the wages share there over two decades (Jarosch et al., 2019). Other overseas research also points to increasing domination by a small number of buyers of labour—that is, employers (Autor et al., 2017). In Australia, Treasury has estimated that job switching has reduced and attributes the decline in wages growth to this phenomenon (Deutscher, 2019). A decline in job switching, after controlling for other factors, is symptomatic of rising monopsony.

Labour productivity

A common rationale for industrial relations reform is the impact on labour productivity (Peetz, 2012). Productivity is the ratio between the quantity of output (goods and services produced) and the quantity of inputs. Measures of productivity are based on *quantities*, not prices. Productivity is *not* measured by the value of output, or the cost of input, or the amount of output not produced when there are no hours worked due to strikes. There are three main measures of productivity: labour, capital and multi-factor labour productivity. In public debate, the main focus is on labour productivity: the ratio of output to labour input. Labour productivity is related to the *quantity* of labour input, *not its cost*. It is the focus of public debate mainly because it is easier to understand and measure than capital or multi-factor productivity, but it is also prominent amongst economists because it provides the foundation for increases in living standards. Higher labour productivity means greater output per worker, and the greater value from that output can be shared between workers and employers (Krugman, 1994).

Productivity is a concept that is not widely understood, including by workplace managers, who often mean something else when they answer questions about productivity — evidenced, for example, in the 1995 Australian Workplace Industrial Relations Survey (Morehead et al., 1997). Labour productivity is not *directly* changed by movements in the value of either the output (its price) or of the input (the hourly wage). So if the price of the product goes up, that does not mean labour productivity has gone up. If the wage (base

pay, penalty rate or overtime premium) paid to the workers producing it goes up, that does not mean that labour productivity has gone down.

It does not follow that changes in prices or wages have no *indirect* impact on labour productivity, but that does not always go the way preconceptions might lead. For example, if the price of labour (wage) goes up, then firms may have an incentive to re-organise firm production and invest in labour-saving technology. The introduction of labour-saving equipment will mean that less labour is required to produce the same output. Factors such as the introduction of new technology, improvements in education and training of the workforce, an increase in non-labour inputs relative to labour and labour-saving devices, can improve labour productivity (Australian Bureau of Statistics, 2008). Studies also identify 'efficiency wages' (Stiglitz, 1976), whereby employers pay a higher wage to induce greater commitment, lower labour turnover and higher labour productivity from employees. By a similar logic, raising employment certainty for insecure workers might, over the long run, increase labour productivity. Wolfers and Zilinsky (2015) broadly reviewed the literature on the links between wage increases and labour productivity. They found a positive relationship due to higher wages: motivating employees to work harder; attracting more capable and productive workers; reducing labour turnover; enhancing quality and customer service; reducing disciplinary problems and absenteeism; reducing the need for employee monitoring; and reducing employee concerns about income security.

Other things being equal, then, increasing the relative price of an input increases the incentive for firms to introduce technology to increase that input's labour productivity. Conversely, reducing the price of labour reduces the incentive for investments to increase

labour productivity. So, reducing wages, over the medium to longer term, reduces labour productivity. An alternative mechanism by which high(er) wages may affect labour productivity is by cutting the funds available for investment: if the increase in wages is so large as to starve firms of those resources, then labour productivity growth may stall and the firm may close. Empirically, the relative price effect appears to dominate. Hence, during the centralised period of the prices and incomes Accord in Australia (the 1980s), labour productivity growth slowed substantially (Australian Bureau of Statistics, 5204.0), because there was a fall in real wages.

It might be argued that regulations requiring employers pay higher wages at certain times or in certain circumstances would change behaviour, and thereby suppress labour productivity below the optimal level a freely operating market would determine. In monopsonistic competition, however, there is no particular reason to assume that a productivity-maximising equilibrium would otherwise be reached. An employer may choose a low-wage production method with high labour turnover and absenteeism and low labour productivity. If monopsony means that employers 'voluntarily' experience a permanent labour 'shortage', then higher wages can lead both to higher employment (by increasing labour supply) and, over the medium term, higher labour productivity (by increasing the incentive to invest in labour-saving technology). Increased labour supply can also mean that capital productivity (the ratio of output to capital input) increases, due to better utilisation of existing capital stock, but we do not go into this further as capital productivity is beyond the scope of this paper.

What about restricting the power of unions? There is a long history of studies of the links between unions and labour productivity, with the most famous, thorough review being over three decades ago (Freeman and Medoff, 1984). The subsequent general consensus was that there was no consistent relationship evident between unions and productivity, with a wide variety of results; but the direct impact of unions on productivity tended towards *zero*. The impact, it appeared, depended on circumstances (Kaufman, 2005; Freeman, 2005). Two of the most influential studies of labour productivity (Black and Lynch, 2001; Appelbaum et al., 2011), consistent with a series of other investigations (e.g. Alexander and Green, 1992; Mas, 2008), found that unionised firms that encouraged participation and consultation had higher productivity than counterparts, while those with confrontationist relations had lower. Consistent with this, a recent study in Norway, where consultation prevails, found that ‘increasing union density at the firm level leads to a substantial increase in both productivity and wages’ (Barth et al., 2020). Some exclusively Australian studies had earlier found: a *positive* relationship between unionism and productivity at workplaces where unions are active (Wooden, 2000); *higher* levels of self-claimed productivity associated with collective bargaining coverage (Fry et al., 2002); and higher productivity in firms with high rates of union membership than in firms with no union members (Tseng and Wooden, 2001). Unionism leads to higher wages (Blanchflower and Bryson, 2004; Stewart, 1991) which, as mentioned above, appears to lead to higher labour productivity over the longer term. Industrial relations reforms that aim at improving the climate for cooperation probably do more to improve labour productivity than reforms trying to alter relative prices of inputs.

Implications for labour market reforms

In general, then, what are the implications for the labour market of commonly demanded reforms? At a general level, we can say that reforms that alter the cost of labour would have ambiguous and probably very small effects on employment in the context of monopsonistic labour markets. Those which reduce the cost of labour would also likely reduce labour productivity growth (though not necessarily its level, as the logic of capitalism is to constantly increase labour productivity through technological change: Marx, 1887). Reforms that increased the cost of labour, at least within bounds, would likely increase the rate of labour productivity growth.

Higher minimum wages reduce the room for monopsony power and may, in certain circumstances (such as perceived labour shortages), lead to higher employment by increasing the number of filled jobs. These conditions may not apply in a sudden, large supply-side shock (as in a pandemic) where the primary public policy response was fiscal ('Jobkeeper'), not regulatory. Our interest is in the 'recovery' phase, as that is the context in which the proposed reforms are being introduced, not one in which massive job losses needed to be stemmed. When the economy is improving, lower wage minimums are likely to lead to reduced employment in monopsonistic labour markets, and higher wage minimums can lead to increased employment, especially in any areas of apparent labour shortage.

It does not mean, of course, that wages can be increased in all circumstances or by unlimited amounts without negative employment or labour productivity effects. Any wage

increase obviously needs to be not so large as to send a firm out of business. So it depends on circumstances and amounts. An analogy might be drawn with water: most plants benefit from the addition of water, but too much can kill them (and indeed, too much water can even kill humans) (Kruszelnicki, 2012).

Those are the general principles that can be applied. What about the more specific agenda of industrial relations reform that was embodied in the Omnibus Bill and Act? To analyse that, we first consider the context in which those reforms were introduced.

Context

The COVID-19 pandemic led to sharp deterioration in the economy and the labour market, though not as severely as first anticipated, principally due to an expensive wage subsidy ('Jobkeeper') introduced early in the pandemic, and fiscal stimulus. Quarterly growth in gross domestic product (GDP) went from +0.4% to -7.0% between December quarter 2019 and June quarter 2020. Unemployment rose from 5.2% in March 2020 to peak at 7.5% in July. Employment fell by 872,000 or 6.7% over two months to May 2020, while underemployment rose from 9.3% to 14.1%. In the second half of 2020, a significant part of these effects reversed. GDP grew by 3.4% and 3.1% in September and December quarters of 2020. Unemployment fell to 6.3% by January 2021, by which time employment had grown 448,000 from July 2020. Underemployment fell to 8.7%. The biggest problem is continuing low wages growth (Kohler, 2021).

Industrial relations effects and problems in the pandemic

Especially during the peak of pandemic fears in the first half of 2020, a number of industrial relations changes occurred (Markey, 2020; Kaine, 2020; Treasury, 2020; Workplace Express, 2020c). The Fair Work Commission (FWC) varied over 100 awards to provide for various forms of short-term pandemic leave. It also deferred the minimum wage increase to the majority of workers. A union claim for special allowances for some at-risk workers was dragged out. Paid pandemic leave for several categories of health and aged care workers who had to miss work and had exhausted other leave entitlements was won in July, and extended in October to March 2021. It did not apply to 'short term' casuals. A campaign for paid leave for all casual workers who lose pay by following isolation rules after being exposed to Covid-19 was unsuccessful. Unfair dismissal claims rose by 60 per cent. The second-largest airline, Virgin, went into receivership and the largest, Qantas, retrenched 6,000 workers, stood down most of the remainder and faced disputes in the FWC over other aspects of its response. Child care became (briefly) free. Some universities, facing big drops in international student numbers, negotiated wage freezes or cuts with their staff, or tried (and often failed) to do it unilaterally.

The 'Jobkeeper' wage subsidy scheme was introduced, a result of pressure from the Australian Council of Trade Unions (ACTU), supported by some business groups.

Unemployment benefits ('Jobseeker') were temporarily increased. 'Essential' workers (for some, this was a new definition of their work) became exposed to occupational risks that many had not previously experienced, and their low pay rates were exposed to public debate. Other low paid workers, such as visa workers, 'short term' casuals and university staff were excluded from coverage of 'Jobkeeper'. Temporary flexibility provisions were

inserted in awards, enabling 41 per cent of employers to direct employees to work reduced hours, and another 29 per cent made other directions, such as to work on different days to normal (Nous Group, 2020). Aside from the loss of working hours, or jobs, for hundreds of thousands of workers, probably the biggest change was in the location of work. For many (perhaps a third of the workforce), their place of work moved to their home. Some employers were forced to adapt to a form of flexibility they may have long resisted. There were negative effects that were also heavily gendered, especially when schools closed and the household division of labour saw women disproportionately interrupt their work to support other family members. This had measurable effects on the productivity of, for example, women academics (Minello, 2020). The FWC indicated it would consider whether some award flexibilities to facilitate working from home should become permanent (Workplace Express, 2020b).

The pandemic also revealed a number of deficiencies in the industrial relations system. Probably the most prominent was the role of employment precarity and multiple job holding, especially in aged care and hotel quarantine services, in spreading the virus. In aged care, many employees were employed in effect as 'casuals' (Charlesworth and Howe, 2018) or were classed as independent contractors, and due to inadequate hours in a single job many work in multiple jobs across the sector. Workers classed as independent contractors, and those formally classed as casuals, had no access to annual or sick leave. Independent contractors had no access to workers compensation, received little training and were outside the scope of the FWC. The vulnerability of these workers has implications for the health of all. Contracting and casual labour facilitated Australia's second wave of Covid-19 (Holden, 2020), and there is evidence that sick leave reduces the incidence of

COVID-19 (Pichler et al., 2020). Insecure workers, many of whom were underemployed (Chartered Institute of Personnel and Development, 2017; Berg, 2016) had a strong financial incentive to log on for work even with Covid symptoms or awaiting test results, with potentially fatal consequences (Smith, 2020; Christmass, 2020). Platform firms are notorious for not providing training (Alkhatib et al., 2017; Broughton et al., 2018), and would not waste money on Covid-19 infection training — an issue critical in infection control in nursing homes and elsewhere (Connolly et al., 2020; Coatsworth, 2020). Many platform workers were expected to do infection training in their own time. Most of these problem areas were not addressed by the legislation that sought to implement the IR reform agenda (referred to as the ‘Omnibus Bill’), other than casual employment, and as discussed below the origins of that change long pre-date the pandemic. It can fairly be said that the stated purpose of IR reform was not to address pandemic-related problems with IR but to promote post-pandemic economic recovery.

The ambivalent approach to tripartism in the pandemic

‘We’re all in this together’ echoed as a government message, corporate brand message and cultural meme through the Covid-19 pandemic. One of the more unexpected but inconsistent manifestations of this was in industrial relations (IR) policy. It was *unexpected* because, for most of the period since 2013, IR policy had been determined without meaningful consultation with trade unions, and was hostile towards unions (Badham, 2017). Most recent had been an attempt to introduce the ‘Ensuring Integrity’ (EI) Bill, targeting union organisation. Under it, in various (and varying) circumstances: a union’s registration could be cancelled; it could be reconstituted with an administrator appointed;

the government of the day could block union amalgamations; and a single employee, employer or industry lobbyist could initiate certain proceedings. The majority governing party has long been seen as the party of capital (Crisp, 1965). Attitudes towards unions divide candidates from the major parties by more than any other issue (Taft, 1998).

It was *inconsistent* because during the pandemic the government appeared to oscillate between consensus and its more usual agenda. Although publicly the government strongly rejected emulating wage subsidy announcements of other conservative governments, the relevant Minister was reportedly conversing daily with the secretary of the Australian Council of Trade Unions (ACTU) (Maley, 2020). The result was the 'Jobkeeper' wage subsidy scheme. This engagement with the ACTU, and some other decisions, led some to suggest that the government had embraced 'consensus politics' (Grattan, 2020). The burial of this philosophy seemed signified by reports that the government was pursuing its already-defeated EI Bill (Marin-Guzman, 2020a), and then the speech by the Treasurer that opened this article. Yet two weeks later, the Prime Minister (PM) relaunched the consensus rhetoric with the announcement of five tripartite working parties³ to 'chart a practical reform agenda' for Australia's IR system. The PM also announced the withdrawal of the EI Bill, its philosophy being diametrically opposed to the rhetoric of consensus.

The omnibus Bill containing a package of reforms, reflecting the five topics covered by the working parties, would be introduced late in the year (Workplace Express, 2020d). Like all

³ Their composition varied, but all contained members from government, unions and employer organisations.

such legislation, it would be ‘pragmatic, balanced and realistic’ and not ideologically-driven (Workplace Express, 2020e). It covered five areas of reform — casual employment, award simplification, enterprise bargaining, greenfields agreements and wage theft — but only the provisions on casuals survived Parliament.

Labour productivity, employment and the reform agendas

Five reform agendas, discussed below, were covered by the working parties. One other (the EI Bill) was moved aside to make way for these five. The working parties met from June through September 2020. There was no agreement on most of the matters at the end of the process, with some unexpected moments of agreement between the ACTU and some employers thwarted by other employer groups (Workplace Express, 2020f). After talks ended, employer bodies lobbied the government to adopt its own agenda, while the ACTU conducted much of its lobbying in the media and with crossbench Senators (Workplace Express, 2020d).

The text below discusses the broad agenda areas. The final content of the Act reflected the outcome of political processes, and so was much narrower than the reform agenda, though the history of the actors suggests the rest of the agenda would be revived if the political moment suited.

Award simplification

Award 'simplification' was the issue on which most employer attention focused before the pandemic. 'Awards' are legally binding instruments, issued by the main industrial tribunal, that set skill-based minimum pay and conditions for each industry and occupation.

Lobbyists for large corporations had called for a 'simpler' IR system. Yet the number of awards had already been cut, from more than 2000 federally in 2006, to just 121 (Mattson and Murphy, 2020). By 2020, after three decades of 'award restructuring', 'award modernisation' and 'award simplification', awards had similar rates of pay for similar types of work. Officials nonetheless argued that awards still appeared complex to employers, and the Minister flagged this would be addressed in his omnibus legislation (Workplace Express, 2020a).

In the IR reform agenda, 'simplifying' appeared more to be a euphemism for reducing or removing penalty rates, related concepts overtime pay, shift premiums and provisions on starting or finishing times, or the minimum pay rates themselves (Australian Mines and Metals Association, 2015). Still, the potential employment effects of changes to penalty rates appeared complex, since recent research on both the supply side (Peetz et al., 2019) and the demand side (Pickering, 2020; Yu and Peetz, 2018) suggest that the main effect is likely to be an increase in hours worked per employee (at lower hourly pay) but no significant gain in the number of employees.

In the face of political difficulties, much of that 'simplification' agenda was set aside before the Bill entered Parliament. What remained was principally a proposal to enable hours for part-time employees to be increased without any overtime premium. The incentive effects would be twofold. First, it would enable employers to reduce the guaranteed (and actual)

hours of existing part-time employees, knowing that they can increase actual hours at a later stage if this suited without the need to pay any overtime premium (the 'guaranteed hours effect'). Second, employers would face a reduced incentive to take on additional workers, as they could cheaply increase hours for existing workers as demand increased without incurring the fixed costs of recruitment, induction and training (a 'fixed costs effect').

The net impact on employment would likely be negative. The fixed costs effect would reduce the number of people employed, especially as the previously-mentioned research on monopsony suggests that any positive demand impact on employment would likely be negligible. The guaranteed hours effect would probably reduce the number of hours worked. The impact on *underemployment* is ambiguous.⁴ The impact of this policy on labour productivity would be small and negative, since reducing labour costs could be expected to reduce labour productivity.⁵

⁴ The guaranteed hours effect would increase underemployment, while the fixed costs would reduce it if the additional hours went to employees who wanted to work more hours. (For instance, instead of two underemployed workers, there could be one fully employed and one unemployed person.)

⁵ The other main proposal in the Bill relevant to this heading would have allowed employers to give 'flexible work directions' to employees to perform new types of work, or at new locations (though the latter seems redundant), if such directions are reasonable to 'assist in the revival of the employer's enterprise'. As 'revival' was not defined, it was mostly left to discretion by members of the FWC to interpret this. This matters as in recent years the notion of 'balance' in appointments to the commission appears to have 'been abandoned', with many appointments coming from employer backgrounds Myer R (2019) *Is the Coalition 'stacking' tribunals? No shortage of ideological pals getting jobs before election*. New Daily. 21 January.. Regardless, there was no

Enterprise bargaining

Both unions and employers claimed the enterprise bargaining system was too complex, but without any agreement over how to simplify it. Some employers had called for the 'better off overall test' (BOOT) to be abolished (Marin-Guzman, 2020b). The BOOT meant an agreement had to make any worker better off compared to how they were under their award. The Bill tried to override the BOOT for a specific group and for a specific time.⁶ It provoked so much opposition that the Minister withdrew those provisions before they reached the Senate. Diminution or abolition of the BOOT, or reduced scrutiny of proposed agreements (as also proposed in the Bill), would reduce labour costs for employers, and expand EBA coverage but very likely through agreements with poor wages and conditions, possibly sub-award. Better paying EBAs would not be affected by any change to the BOOT. Again, neither increased employment nor increased labour productivity need follow.

If the purpose of enterprise bargaining is to achieve agreement between capital and labour, though, the major complexity issue is the barriers facing worker representatives. The enterprise bargaining and industrial action provisions in the Fair Work Act occupy over 120 pages, not counting those relating to remedies and enforcement. The bar for prohibiting a strike is low (McCrystal, 2019). Australia's framework is much more complex than the

reason to believe that revival would be confined to revival from any COVID-19 induced crisis, and there was the potential to expand coverage to all industries through statutory regulation.

⁶ For workers in firms that could claim they were affected by COVID-19, through agreements made within two years of passage of the Bill, though their effects could last many more.

comparable United Kingdom statute. Even the Productivity Commission (2015) questioned the 'overly complex processes for secret ballots'.

There are other complexities that are uncommon in other collective bargaining systems. For example, unions are banned from engaging in pattern bargaining, though no comparable prohibitions are placed on employer behaviour. Over time, these provisions have restricted workers' rights to take industrial action. While awards have been simplified, collective bargaining has become more complex. The level of detail in Australian legislation, beyond that in most other OECD countries, appears to principally influence the balance of power (Long, 2017). In the absence of such a reform, the reform proposals would likely have created no employment gains and, very likely, labour productivity losses.

Greenfields agreements

Greenfields agreements are agreements that cover a new project, usually in construction, but also (less commonly) outsourced services, new ventures and, rarely, theatrical shows (May, 2016). The reform agenda here was to increase the duration of agreements on larger construction and new project sites (employers wanted 'project life' agreements: Lambert et al., 2021). In the Bill, for up to eight years, any employees recruited to a new 'major' project covered by one would be unable to negotiate better conditions through industrial action. A major project was anything worth above \$250 million that the minister declares to be 'major' (about the size of a motorsport entertainment complex or a medicinal cannabis plant (Tabet, 2020; Australian Government, 2021)). Employees there would be denied the right to negotiate over a long period of eight years. Due to an interaction with an earlier

amendment to the Act,⁷ an employer-drafted ‘agreement’ could be imposed upon employees by the tribunal, enabling a corporation a new ‘major’ project to unilaterally deny workers their rights to industrial action otherwise available to them for eight years. This would be somewhat reminiscent of the unilateral ‘employer greenfields agreements’ (EGAs) of the WorkChoices era, which cut penalty rates, overtime pay and shift premiums. As with other construction reforms (Allan et al., 2010), the biggest effect would mainly have been be upon the distribution of income between labour and capital in construction, not on enhancing labour productivity or employment.

Casual employees

The changes to casual employment were the only part of the original reform agenda that passed the Parliament, so special attention is given here. Two Federal Court cases in this area were probably the biggest single factor leading to the introduction of the Bill, due to concern by some employer organisations about the potential cost. Employers claimed that failure to pass changes overturning the court would lead to ‘widespread business closures and mass job losses’ (Lambert et al., 2021).

⁷ A new subsection (4) was added to section 182, allowing a greenfields agreement to be deemed as approved, even if the relevant union had not signed off on the agreement, after a period of 6 months. In this iteration, however, employers eschewed the opportunity to make use of these unilateral greenfields instruments O’Callaghan M (2017) *Greenfields Agreements Review*. Canberra: Department of Employment., presumably because the BOOT test made them of minimal value for cutting pay and conditions. Moreover, withholding the right to strike for four years would be of questionable benefit if employers felt vulnerable to retaliatory action once four years expired. This situation would likely change significantly if ‘project life’ agreements came into effect.

For decades, employees defined as a casual by their employer were not entitled to paid annual leave or sick leave. So one in four workers had no annual leave from their employer (Australian Bureau of Statistics, 6333.0). Their employment contract effectively lasted for one shift. An employer who wanted to avoid invoking unfair dismissal laws — which technically only apply to those ‘employed on a regular and systematic basis’ — could simply reduce the casual’s hours, perhaps to zero. These workers’ power was diminished further by very low union density. Hence, casuals were generally paid at a lower rate than their ‘permanent’ equivalents, especially in low-paid occupations (Laß and Wooden, 2019). Firms also used casual employment as a probationary, low-wage pathway into permanent positions. In the mining industry, for example, companies deployed labour-hire workers alongside permanent employees, full-time, doing identical work (Murray and Peetz, 2010). Casual employment was not especially about flexibility of work. Most ‘casuals’ expected to be with their employer in a year’s time, and at least half worked the same hours week to week. Their working arrangements were not a response to any employer’s need to flexibly deploy labour over short periods in a variety of situations (Peetz, 2020). They were cheap and stable, but the option of reducing hours, or cutting off all work, gave the employer substantial power over these employees.

Eventually, after a leave-deprived mining employee sought compensation for unpaid leave from his former employer, the Federal Court determined he had not been a genuine casual, and should be paid for leave owed. Another leave-deprived employee won a similar case.⁸ The Act renders the contemporaneous High Court challenge to these decisions irrelevant,

⁸ WorkPac Pty Ltd v Skene [2018] FCAFC 131; WorkPac Pty Ltd v Rossato [2020] FCAFC 84.

by enshrining employers' right to define someone as casual. If the employer does that at the start of the worker's employment, and points out that there is no promise of continuing employment, then the employee is indisputably a casual. Employers can casual workers as casual even if they then have regular, continuing employment. The employee is without leave entitlements, and can have his or her hours cut, or cut out, at the decision of the employer. The Act explicitly excludes consideration of what the employer actually does with the employee, making the only consideration at law what the employer claimed they would do, even if this was never actually implemented.⁹

Employers' organisations strongly advocated for the changes. In May 2020 they claimed that the Court decisions were 'discouraging employers from retaining casuals [or] engaging new employees' and 'increasing the level of unemployment' (Wilcox, 2020). Failing to be discouraged, employers themselves increased 'casual' employment (that is, of workers without leave entitlements) over the six months after that claim was made by 17.3%, while they increased that of workers with leave entitlements by just 3.0%.

While those data suggest no employment gain would come from the legislation to overturn the Court decision, it is noteworthy that, even if there was any gain, it would not be in jobs generally considered to have high 'job quality' (Campbell and Chalmers, 2008). The stylised

⁹ However, the bill does hold out the prospect of a better life in some respects. If, after a period of XX months, 'casual' employees want 'permanent' status, they can ask for it, and the employer should grant their wish unless there are reasonable business grounds not to. Leave-deprived employees can at least take that question to court, if they have the money and persistence to do so.

features of casual employment — high turnover, low commitment, low pay — are generally the opposite of ‘efficiency wage’ notions of how to boost labour productivity (Stiglitz, 1976; Wolfers and Zilinsky, 2015), so it is unlikely the promotion of casual employment, if successful, would increase labour productivity.

Compliance and enforcement

Observers have long complained about systematic underpayment (‘wage theft’) by many employers (heightened since the loss of union rights of entry) and about business models, such as franchising and sub-contracting, that encourage it. The bill partly addressed this issue by criminalising certain deliberate instances of this behaviour. It would have overridden some state laws. These provisions were uncontroversial and indeed the only subject of agreement between employers, unions and government. They did not go far: the maximum penalty was rarely used, not many offenders were caught, and punishments were light (Corr, 2017). The Bill proposed widening the range of matters that could be dealt with through the small claims process, rather than the full court system. This was a positive step but would not help those reluctant to devote the time and money to such a process. To the extent that it would have prevented sub-legal wages and conditions, it would have enhanced labour productivity and forced reasonable wage offers by employers.

It appeared, though, that this was not so much part of a reform agenda as it was a trade, offered to cross-benchers in return for support for the remaining reform agenda. When several other aspects of the Bill faced certain defeat, the Government withdrew from

Parliament these provisions — probably the aspect of the Bill most likely to promote labour productivity — with observers suggesting ‘they may be now held in reserve to be used as leverage to try and drive further change’ (Coorey and Marin-Guzman, 2021).

Conclusions

The existence and indeed the growth of monopsonistic features in labour markets renders irrelevant a lot of old ideas about the economic consequences of industrial relations reform. An understanding of how labour costs shape labour productivity reveals many assumptions to be false as well. Recent theoretical models and empirical data indicate that the industrial relations reforms sought by the Australian government were unlikely to lead to any increase in economic growth through higher labour productivity or employment. In relation to proposed agendas in enterprise bargaining, greenfields agreements and award simplification (as well as union regulation), the principal effect would have been to reduce labour incomes. This may redistribute resources from labour to capital, but would not boost economic recovery. In many circumstances, allowing employers to offer lower wages may mean that fewer jobs are filled, labour turnover is higher, absenteeism is higher and employment is lower. It may reduce the incentive on employers to implement investments that would improve labour productivity. Proposals to more energetically punish wage theft may have had the opposite effects, but it turned out that these were incidental to the politics of reform, not a core part of the reform agenda. They were abandoned by the government despite support from the other parties.

In the end, the only part of the reform agenda that passed Parliament concerned changes to the definition and treatment of casual employees. But this was more about fixing a problem for employers who had misused casuals anyway, who feared having to compensate casuals for the leave entitlements they had been denied. Casual employment grew strongly before the Bill took effect, the crisis in employment the Bill was meant to solve eased before the Bill was passed, and even if successful this would have done little to boost labour productivity.

For some, claims about the labour productivity and employment gains from such an agenda might just be rhetoric to advance a cause. For some others, the view that such an agenda could produce higher employment and labour productivity might reflect an outdated understanding of labour markets, one that ignores the role of monopsony, and mistaken views about the drivers of labour productivity, for example by confusing it with costs or profitability. Or it may simply reflect cognitive dissonance (Festinger, 1957), and the desire to believe what is in one's interests. Amongst those in positions of power, it might reflect the particular incentives they face. The range of plausible national income distributions means that the highest income earners have a strong incentive to promote policies that reduce tax for the rich or increase the surplus generated by labour that can be transformed into profit (Milanovic, 2016). However, it is unwise to admit this as a motivation for policy, as it would not attract public support. So, policies aimed at redistributing income upwards are portrayed as promoting growth or recovery. Those aspects of the agenda that were frustrated by the Parliament remain on the business sector's agenda and could, in favourable circumstances, be revived. Alternatively, the EI Bill could return to the agenda,

but the literature discussed earlier suggests that, overall, it offers little, probably nothing, for labour productivity and not much more for employment.

In the meantime, other policy agendas receive inadequate attention. While some, such as economic stimulus, were considered and even enacted, others such as movement towards reconstruction (Pennington and Stanford, 2020) receive little or no attention, and problems with the industrial relations system that the pandemic exposed were not addressed. To the extent that it diverted attention from elsewhere, the focus on industrial relations reform as the vehicle for recovery probably reduced, rather than increased, economic growth and recovery.

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