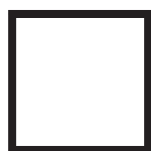
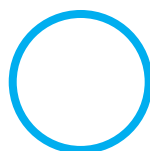
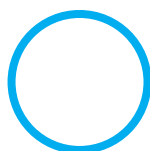
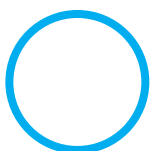




**WORKPLACE RELATIONS FROM  
KEATING TO HOWARD  
THE CASE FOR FURTHER REFORM**

**ANDREW ROBB AO MP**

**ADDRESS TO THE INSTITUTE OF PUBLIC AFFAIRS,  
MELBOURNE, 20 SEPTEMBER 2005**



**Institute of Public Affairs**  
Australia's Leading Free Market Think Tank

# WORKPLACE RELATIONS REFORM FROM KEATING TO HOWARD

## the case for further reform

**ADDRESS BY ANDREW ROBB AO MP  
TO THE INSTITUTE OF PUBLIC AFFAIRS  
MELBOURNE, 20 SEPTEMBER 2005**

E&OE

**T**he Labor party and the union movement would have you believe that the Government's proposed reforms to our workplaces are a revolution – the product of ideological zealots.

What they don't tell you is that these reforms are the third stage of a deliberate change that has been going on for 12 years now; an evolutionary process from compulsory arbitration to agreement making at the workplace level, which was started by Paul Keating in 1993 and accelerated by the Howard Government in 1996; a third stage which will, in effect, seek to complete the model of industrial relations spelt out by Paul Keating and Laurie Brereton 12 years ago.

What they don't tell you is that these 12 years of changes have merely sought to give practical effect to the reality that had been slowly emerging on the ground, in the workplace through the 1980's and early 90's, in defiance of heavy-handed government regulation, in defiance of the Conciliation and Arbitration Commission's paternalism and in defiance of union abuse of its monopoly position in the industrial arena.

What they don't tell you is that the proposed workplace reforms merely seek to give every workplace the opportunity that has already been grasped by some of our companies, to the great benefit of those companies, and our national economy.

### **A CASE STUDY— RIOTINTO**

Rio Tinto, and its 10,000 strong workforce across Australia, is one such company.

I recently had the opportunity to tour the Pilbara region to look over Rio's Tinto's Pilbara Iron operations (formerly known as Hamersley Iron).

The success of those operations has contributed signifi-

cantly to Australia's recent economic performance, but it was not always this way.

Although mineral resource prices are enjoying good times at the moment, even as recently as 2002, resource prices were at extremely low levels. For example, iron ore prices had declined steadily for the last 30 years.

Underpinning Rio Tinto's ability to cope with the bad times was its significantly increased productivity. In 1986, Rio Tinto produced 10,000 tonnes of ore per full-time employee; in 2004, Rio Tinto produced 41,000 tonnes of ore per full-time employee – a four-fold increase in productivity in under 20 years. Such a turnaround is a remarkable by anyone's measure.

And it came just in time.

The development of the Pilbara iron ore industry in the 1960s, in response to the needs of Japanese industry, was an extraordinary feat in which the industry can take pride.

It is harder to be proud of what happened in subsequent years.

It is true that more mines were built, and that export tonnages rose. However, the industrial relations record of the Pilbara deteriorated steadily over the next 25 years until the Pilbara joined the national coal industry in setting records for inflexible work practices, duplication, inflated costs and days lost.

Any productivity gains which were made came largely from economies of scale. All too often, squeezing out extra tonnes involved throwing capital at problems that were the result of an antagonistic industrial culture.

Strikes and stoppages could be triggered by turf wars between unions, by ideological crusades that had little to do with employees, and by trivial and spiteful claims such as having insufficient varieties of ice cream in the canteen.

Underlying this disruption was the union belief that the

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aims of employer and employee could not coincide. This credo dictates that an employee's first loyalty must always be to his or her union.

The result was the gradual destruction of Australia's record of being a reliable iron ore supplier. All too often, our supply was interrupted, and Japanese steel mills began to encourage other suppliers.

In the mid eighties, the Brazilians developed their massive, high grade iron ore deposit at Carajas. Exports began in 1986, and the distance from Japanese ports was more than offset by the steel producers' desire for security of supply.

Over the next two years, Australian iron ore shipments declined.

Rio Tinto sent a group of its managers, employees and union officials to Brazil to see the nature of the threat they faced. However, on their return, their message fell on deaf ears, and Hamersley Iron's fortunes continued to wane.

In desperation, in 1993-94, Rio Tinto introduced an "all staff" workforce – where traditional "wage" employees were provided with the same benefits as their "staff" counterparts in management. This change was facilitated by offering all miners individual contracts under industrial legislation recently passed by the Court Government.

The new approach sought to wipe out distinctions between management and employees – to bridge that historic gap and demonstrate that everyone's fortunes were linked to that of the business or enterprise.

By 2005, this approach has led to increased employee benefits, such as generous superannuation and share saving schemes, and an incentive program linked to business results, which is applied across all employees at Pilbara Iron.

Predictably, when "all Staff" was introduced, the unions opposed it tooth and nail, and the AIRC did its utmost to frustrate the move. But the workforce voted with its feet, and almost unanimously accepted individual contracts. Since 1995, no Pilbara Iron operation has lost a day to industrial dispute. This turnaround in industrial relations is simply breathtaking.

The deal struck provided mutual benefits.

For the staff, it included more money, more time off, more flexibility in taking time off, and a safer, more harmonious workplace.

For the company, it meant greater flexibility, cost con-

trol and productivity – and being able to win back the regard and trust of customers.

While I toured one of the mines, I was driven in a 240 tonne tipper truck with an employee who had worked on the site for 28 years. I asked "What is the main difference between 1990 and today?" He answered "Today, we talk". That's all.

His response encapsulated exactly what enterprise bargaining is all about. Workplace issues are discussed between supervisors and workers on a daily basis, and dealt with so that they don't become problems.

A key factor in the success of "all staff" is that all employees feel aligned with the business and are proud to see it succeed. This is important, because for supervisors and management it is no longer a matter of being limited to meeting legal obligations, but rather – caring about the people you work with and ensuring that people get a "fair go" and are treated as you would want to be treated yourself.

For its part, management has had to learn to "talk" meaningfully to their workforce and deal directly and effectively with workplace issues. It has removed the "them and us" mentality (and reality) of the workplace.

In the absence of a self-interested wedge being driven between employer and employee, parties, even ones which had a long history of animosity and industrial warfare, were able to discuss, and agree on, a good deal for both sides.

Opponents of individual agreements with employees consistently raise two assertions about the effect of these deals. Firstly, they argue that safety will suffer as a result of relaxed workplace regulation, and secondly, that the most marginalised members of the community will be exploited.

Contrary to these assertions made about the effects of enterprise bargaining, at the same time as the workplace was made more flexible and efficient, employee safety has increased. In fact, the number of days lost due to injury has decreased five-fold, and the safety culture is so strong that all employees are empowered to stop doing something that they consider unsafe with the theme "if it is not safe, don't do it that way". Not only this, but now Rio Tinto is also one of the country's best employers of one of the most marginalised groups in this nation – aboriginals.

Without the industrial relations breakthrough of min-

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ers on individual workplace agreements, it is doubtful that Rio Tinto could have committed \$1.9 billion to expanding its port, rail and mine investments to take advantage of China's economic boom. Moreover, the considerable existing investment in physical and social infrastructure could quite easily have deteriorated in the face of competition from more dynamic overseas competitors.

In short, the whole community has benefited from Rio Tinto's decision, in the face of sustained and powerful opposition, to communicate directly with its employees and reach agreement for mutual benefit. There is one exception. The union movement, which violently opposed these reforms, has suffered a decline in membership from well over half of the workforce in the 1990s to almost zero today.

## THE LESSONS FROM RIO TINTO

The Rio Tinto experience provides a 25 year window into the depths we have been to, and the heights we can reach, in every workplace across Australia.

The Rio Tinto experience shows the remarkable evolution that has begun to seriously take hold in the way we approach workplace relations in Australia – the move to negotiating genuine agreements at a workplace level which best meets the peculiar needs of that workplace and those employees.

The Rio Tinto experience shows the fear of further evolutionary change is misplaced, and that scaremongering about further reform is working against the interests of all Australians.

The Rio Tinto experience provides indisputable evidence that strong business performance is linked to understanding and accommodating the personal and varying needs of individual members of your workforce; it showcases the benefits of treating your employees as you would like to be treated yourself.

The Rio Tinto experience provides a blueprint for continuing the strong growth in the economy, continuing the growth in jobs and take home pay and continuing the low interest rate environment that has prevailed for nearly a decade now.

Rio Tinto is not a one-off example – the positive experiences which Rio Tinto has experienced – higher wages, higher productivity and improved safety – are repeated across the mining sector.<sup>1</sup> It is not surprising that the min-

ing sector has the highest penetration of Australian Workplace Agreements (AWAs) of any industry.<sup>2</sup>

## THE LEAD-UP TO WORKPLACE REFORM

Rio Tinto's success forms the backdrop to over 20 years of change – an inevitable progression towards agreement making at the workplace level.

Let me trace some of the background to the emergence of agreement making in the workplace.

The 1970's saw a dramatic change in Australia's economic paradigm. The market rigidities characterising post-war economic policy were exposed to external shocks, and our protected inward looking economy could not cope.

The folly of heavy market regulation was exposed.

It was recognised by business people and economists the world over that the world was changing, the world was globalising and, in order to achieve sustainable economic growth, competition needed to be encouraged, government interference limited, monopolies eliminated.

Critical to achieving these goals was the deregulation of markets. In the 1980's, the Hawke Government, with the full cooperation of the Coalition parties in the Senate, deregulated substantial tracts of our economy. Australia deregulated the financial sector, floated the Australian dollar, lowered tariffs and subsidies and relaxed restrictions on foreign investment.

Yet, to placate a sceptical and hostile union movement, the Hawke Government went the other way and further regulated and centralised the labour market, under the early Accords. Accord Mark I had, as its central tenet, *"emphasis on a central mechanism for wage determination based on the Australian Conciliation and Arbitration Commission"*.<sup>3</sup>

The system that Bob Hawke re-introduced was one with which he was familiar as an industrial advocate during the 1950s and 1960s. The "idea" of the post WWII system was that "national" productivity would be distributed "fairly" through national wage increases.

Of course, it did nothing of the sort. Productivity is not "national". It is generated personally or, at best, at the enterprise or workplace level. Centralised wage determination took from those who worked productively and gave to those who did not, discouraging the potentially productive from doing anything more than necessary.

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Rather than the productive or the innovative being rewarded, it was the industrially strong who received the dividends of the centralised system.

Under the Accord Mark I, wages were set centrally and tied to rises in prices. The certainty of wages linked to CPI, brought immediate and serious wage-price spiral pressures. The combination of deregulation in some sectors in the economy but greater regulation in the labour market was unsustainable and the Accord system went through several rebirths.

Concurrent with the introduction of the Accord, the Hawke Government commissioned a report on the industrial relations system, commonly referred to as the Hancock Report,<sup>4</sup> handed down in April 1985. Despite exploring enterprise level bargaining as a viable alternative, its findings were expectedly conservative. The Hancock Report found it could not reach any firm conclusion about the consequences:

“which might exist under an alternative system relying more heavily upon collective bargaining”<sup>5</sup>

In other words, the much heralded Hancock Report sat on the fence in the interests of preserving the status quo, in the interests of preserving the power of the few who sought to dictate all that went on in every workplace across the country, including the setting of wages.

Although enterprise bargaining was formally sidelined by the Hancock Report, the market continued to force the issue. It was being recognised that tying wage increases to productivity at the workplace was fundamental to achieving sustainable growth.

The Hawke Government did his best to head off this threat to the system, telling the Business Council of Australia that enterprise bargaining would be introduced “*over my dead body*”.

In the end, politically speaking, he was right.

The Hawke Government and the ACTU realised that the Hancock ‘do nothing’ response was not sufficient to save the system, and introduced another twist. According to them, the productivity problem was not caused by the centralised system nor was it to be fixed by enterprise bargaining. In fact, the problem was too many unions, not enough training and an award structure that failed to allow for career progression.

Backed by the “thinking” contained in the ex-commu-

nist Laurie Carmichael’s 1987 manifesto, “Australia Reconstructed”, the Hawke Government and ACTU tried to re-invigorate the centralised system by re-working classifications, linking wage rates to the mythical “C10” metalworker and forcing unions to amalgamate.

While policy debate between the experts raged, something more fundamental was happening at the workplace level.

Unconcerned with politics, the market began to vote with its feet.

In the face of sustained, and often vicious opposition from the union movement, and in spite of the significant institutionalised barriers facing early moves towards enterprise bargaining, employers and employees forced the issue in a number of monumental struggles to prevent the centralised system dictating the workforces every move.

Seminal disputes such as *Wide Combs*, *Mudginberri* and *Dollar Sweets* showed that employers, and employees, were serious about determining their own fate, and placed ever mounting pressure on the government and the institutions controlling their fate to give them the power to choose their own destiny.

Finally this pressure came to a head and, in 1987, Accord Mark III was introduced by the AIRC’s *National Wage Case*.<sup>6</sup>

This decision introduced a second tier of wage increases dependant on enterprises achieving equivalent productivity offsets, and Australia got its first taste of enterprise level bargaining. However, this link between wage increases and productivity was abandoned the following year under Accord Mark IV<sup>7</sup> in favour of award restructuring, as it was recognised that enterprise or workplace bargaining in the existing overly prescriptive award system was unworkable.<sup>8</sup>

In 1989, as negotiations for the new Accord teetered on the brink of collapsing, Paul Keating threatened to introduce pay increases on an enterprise by enterprise basis.<sup>9</sup>

This threat was not carried through, but the cries for some move to enterprise bargaining grew as labour market rigidity persisted.

In 1989 the *Business Council Bulletin* noted of the system:

“What we have developed in Australia is an industrial relations system in which the trade unions have too much scope to exert industrial muscle, employers have too lit-

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tle incentive to resist, the structure of unions and awards speeds up the transmission of wage pressures and there is no power with the tribunals to ensure observance and enforcement of awards. We have a system almost ‘designed’ to impair productivity and to abort growth at regular intervals.”<sup>10</sup>

Eventually the balloon burst.

The onset of the “recession we had to have” gave impetus to the restructure that we should have had.

In October 1991, the AIRC handed down a supplementary National Wage Case decision,<sup>11</sup> endorsing en masse enterprise level bargaining and establishing principles for the certification of agreements.

The requirements laid down by the AIRC in late 1991 resemble many of the present requirements for certification of an enterprise agreement, and this decision is widely accepted, for formal purposes, as the commencement of enterprise bargaining in Australia.<sup>12,13</sup> The AIRC was a reluctant convert and did its best to neuter enterprise bargaining from the start.

In 1992, the legislative underpinning for certified agreements was beefed-up by the Industrial Relations Legislation Amendment Act 1992 and enterprise level bargaining was firmly placed in the public spotlight.

However, the 1992 amendments gave significant discretion to the AIRC to refuse certification “in the public interest” where the agreement related to only one enterprise<sup>14</sup> and did not permit employee-employer bargaining, leading to trepidation from employers lifting their heads above the trench.

## **KEATING’S 1993 REFORMS— THE FIRST STAGE IN WORKPLACE BARGAINING**

When Paul Keating was re-elected in 1993, he sought to implement the substantive steps towards the decentralisation of wage determination – and move towards agreements setting terms and conditions at an enterprise or workplace level.

On 21 April 1993, Paul Keating addressed the Institute of Company Directors and outlined his vision for the new Australian labour market:

“let me describe the model of industrial relations we are working towards. It is a model which places primary emphasis on bargaining at the workplace level within a

framework of minimum standards ... Over time the safety net would inevitably become simpler. We would have fewer awards, with fewer clauses... We need to find a way of extending the coverage of agreements from being additions to awards ... to being full substitutes for awards.”

Not long after that, in true form, the ACTU nobbled Mr Keating’s vision for the modern workplace.

When Mr Keating’s initiatives were introduced in Parliament, they were a watered down version of Mr Keating’s grand vision for workplace reform. However, despite the ACTU’s objections, Mr Keating’s Industrial Relations Act 1993 introduced, for the first time, as the primary object of the Act:

“Encouraging and facilitating the making of agreements, between the parties involved in industrial relations, to determine matters pertaining to the relationship between employers and employees, particularly at the enterprise or workplace level” (emphasis added)<sup>15</sup>

The reforms introduced two streams of agreement making.

The first agreements, known as “certified agreements”, were available to employers who were involved in a dispute under a federal or state award, and required union agreement. These agreements were little more than an institutionalised endorsement of earlier practices, albeit that the requirement to prove that such an agreement was not contrary to the public interest was removed.

However, the second stream of agreement making, known as “enterprise flexibility agreements” broke new ground.<sup>16</sup> For the first time, legislation enabled employers to override the award system by reaching agreement with a group of its employees without union involvement.<sup>17</sup>

Even though workplace reform had commenced in earnest, significant roadblocks impeded employers reaching agreement – unions were entitled to intervene in any agreement which came into their purview,<sup>19</sup> and the Commission had the discretion to refuse to approve the agreement where the employer had not notified all relevant unions of their intention to negotiate with employees, and the requirement to bargain in “good faith” permitted the union movement to exercise substantial control over the process.

These legislative provisions, with the aid of a complicit AIRC, meant the union movement was able to exercise

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substantial control over the process. Moreover, the AIRC did its best to stopping the spread of the Rio Tinto, direct dealing model.

In a series of cases, during the early to mid 1990s, involving managers from Rio Tinto's Western Australian operations, the AIRC denied the benefit of staff arrangements to the blue collar workforces in Rio Tinto's alumina businesses, despite the direct experience of the benefits that could be won by breaking down the false distinction between "award" and "other" employees.

A decision in November 1995 by a Full Bench of the Commission summed up this attitude:

"On the matter of staff contracts and the role of unions in the collective bargaining process a Full Bench of the Commission in a decision affecting a CRA subsidiary company operating the Bell Bay Aluminium Smelter came to the following conclusions which we endorse:

"The establishment of conditions of employment at an enterprise level through a system of individual contracts between a company and each of its employees is one at variance with our system of industrial relations, a system which, since its inception, has been based upon collective processes as the means of providing terms and conditions of employment at the workplace. The present IR Act is based on a system of collective regulation in which registered organisations of employers and employees acting as parties principal are an integral part of the collective processes which operate under the Act.

The company's actions in deliberately seeking to eliminate the role of the unions at the workplace through the establishment of individual staff contracts, is inconsistent with the central role that registered organisations are given under the IR Act, in the prevention and settlement of industrial disputes. The Commission has a statutory obligation to encourage registered organisations [s.3(e)]."<sup>20</sup>

In addition to legislative and institutional road-blocks, the processes underpinning agreement making were arcane and inaccessible to the average employer.

Even where the employer was able to decipher an award, the approach taken to interpreting the "no-disadvantage

test" meant that various contingent liabilities and benefits in awards needed to be addressed with such certainty that it was virtually impossible to draft an agreement without referring back to an award, and most awards were hundreds of pages long.

For most employers, it effectively eliminated their ability to bargain directly with their employees, and if they did, the agreements amounted to little more than awards with add-ons.

Over the working life of the legislation (about two years) just 261 enterprise flexibility agreements were approved covering only 23,200 employees.<sup>21</sup> These statistics indicate that the legislation failed to provide a real alternative to awards for employers other than those with large, unionised workforces.

This first foray into enterprise bargaining was little more than a vehicle for unions to place further demands on employers, and provided them with a second bite at the cherry – when award level negotiations did not achieve their goals, then enterprise bargaining provided another alternative.

Some inroads were made into industry level wage determination, but the difficulties in negotiating, drafting and approving agreements affected the take-up rate of agreements, meaning that the true benefits of enterprise bargaining – productivity based bargaining and the simplification of awards and industrial regulation – were compromised.

Nevertheless, Mr Keating's reforms and the success of individual contracts under State legislation gave the broader business community a sniff of the benefits associated with agreements at the enterprise level.<sup>22</sup>

## **THE SECOND ROUND— THE WORKPLACE RELATIONS ACT 1996**

When elected in early 1996, one of the first priorities of the coalition government, which had supported Mr Keating's initial round of changes, was to seek to give full effect to the model outlined in Mr Keating's 1993 speech to the Institute of Company Directors.

These changes included reducing the scope for third parties to interfere in agreement making, clarifying where responsibility lay in this process. Awards were simplified, limiting their ability to regulate all aspects of the work-

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place. A broader range of agreements was made available, with provisions for the first time for agreements between individual employees and their employer, and agreement-making was made more attractive and accessible.

So far as industrial action was concerned, s127 was inserted into the Workplace Relations Act 1996 (WRA) to prevent unlawful industrial action and sections 45D and 45E were reintroduced into the Trade Practices Act 1974 to prevent unlawful boycott conduct.

Once enacted, the WRA clearly reflected the Government's desire to move agreement making to the forefront of industrial regulation, with the object of:

“Ensuring that the primary responsibility for determining matters affecting the relations between employers and employees rests with the employer and employees at the workplace or enterprise level.”<sup>23</sup>

At the heart of these reforms was continuing the move away from compulsory arbitration and towards agreement making at the workplace level.

This was attempted, partly, by the introduction of two new streams of agreement making – the ability of an employer to negotiate directly with their employees, either collectively or individually, largely free from third party interference (other than the Commission in the case of collective agreements), unless that was the wish of the employees affected.

In collective agreements, the requirement to notify all relevant unions prior to negotiations commencing was removed, and union interference was only permitted in the process where an employee actually requested their presence.<sup>24</sup> Furthermore, the requirement to bargain “in good faith” was removed, as was the double-standard for certification (at least statutorily).<sup>25</sup>

Easily the most controversial amendment from a union point of view was the introduction of AWAs, which allowed, for the first time at a federal level, employers to make individual agreements with their employees. The introduction of AWAs was bitterly opposed by Labor and the ACTU.

In addition to permitting individual employers and employees to reach agreement, AWAs introduced another significant innovation to the industrial landscape. For the first time, the approval of agreements was to be conducted

by a bureaucratic process through the Office of the Employment Advocate rather than the adversarial, and sometimes arbitrary, processes of the AIRC.

The Government's 1996 reforms also made it easier for flexible, family-friendly practices to be introduced at the workplace. About 83 percent of federally certified agreements now contain at least one family-friendly provision such as carers' leave, part-time work or time-off in lieu, and a third of these have three or more family friendly provisions. By contrast, the union backed award system has persisted with provisions which deliberately hinder family-friendly practices, such as persisting with bans on part-time work, despite the disproportionate influence on women seeking to balance work and family.<sup>26</sup>

Without a majority in the Senate, and with weak leadership of the Labor party, the scope of these reforms was hindered. The WRA as passed by the Senate contained a number of modifications limiting the effectiveness of the Coalition's reforms.

The reality of political necessity meant that the WRA as passed limited the effective uptake of agreement making by employers. The principal limitation was the forced retention by the Senate of the no-disadvantage test, which has continued to be used by the Commission and the unions alike to frustrate and severely complicate agreement making, both at the workplace and the individual level.

Firstly, although awards were “simplified” to 20 allowable matters, this process was lengthy and adversarial and, even though “simplified”, awards were still considerable documents, typically 100 – 300 pages of unintelligible legal jargon.

Parties wishing to enter into an agreement still faced the additional costs in the drafting of the agreement and the uncertainty in having their agreements endorsed, and the prospect of agreements fully replacing awards was, in most cases, thwarted.

Secondly, where agreements were made with award free employees, the designation of an award for the purposes of the no-disadvantage test for award-free employees, such as some salespeople and some management employees, meant that in order for an employer to “simplify” their existing employment arrangements, they were required to pick-up all the baggage associated with the designated award.

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Despite these shortcomings, the WRA proved to be far more successful than its predecessor and took Australia another significant step forward towards genuine and simple agreement making. Productivity benefits flowed.

In 1997, the first year of operation of the WRA, there were 1441 union agreements covering 335,986 employees, and 278 non-union agreements covering 30,008 employees. In 2004, there were 10,906 union agreements covering 1,247,102 employees and 2,988 non-union agreements covering 169,559 employees.<sup>27</sup>

These figures are demonstrative of greatly increasing the accessibility of workplace level agreements, however, they still tend to be focussed in large to medium enterprises.

As at 31 August 2005, a total of 744,966 AWAs had been approved by the Office of the Employment Advocate, across 14,768 employers since the 1996 reforms were implemented. 478,194 (or 64%) of all approved AWAs were approved in the last three years. However, despite employing 50% of the workforce, small business represents only 15% of the AWAs being approved.<sup>28</sup>

Importantly, the creation of AWAs meant that when the Gallop Labor Government removed the right to individual contracts under WA legislation, Rio Tinto, and others, were able to offer their workforce federal AWAs, and avoid a return to the divisive award based system.

What these figures suggest is that although the 1996 reforms have made workplace agreement making accessible to many more businesses, there is still a significant way to go before agreement making is accessible for all employers.

## THE EFFECTS OF THE REFORMS

It is widely recognised that this progressive introduction of flexibility into individual workplaces has been one critical factor underpinning the resilience and growth of the Australian economy over the last decade.

In the last ten years these reforms, in combination with other reforms, have led to 1.6 million new jobs being created, the lowest level of unemployment in 29 years, and the lowest level of long term unemployment in 19 years, take home pay increasing by 14.9% more than inflation, and low interest rates. Importantly, the collaborative nature of workplaces stemming from employee/employer agreements has fostered the lowest level of industrial dis-

putation in Australia's history.

Indeed, Access Economics estimates that the value of these reforms in 2004 amounts to over \$8,000 per year per worker.<sup>29</sup>

Indeed, in opposing the government's latest round of reforms, even Mr Beazley has recognised the success of these 12 years of reform:

“An industrial relations system that has produced high productivity growth, moderate wage outcomes, low strike levels and record corporate profits does not need radical change...”<sup>30</sup>

And Mr Beazley is right – radical change is not required. Nor is it being proposed.

What this round of reforms is seeking to achieve is simply the completion of the industrial model outlined by Paul Keating in 1993.

## THE CASE FOR FURTHER REFORM

As quoted earlier, the industrial model espoused by Paul Keating in 1993 concluded that “*we need to find a way of extending the coverage of agreements from being add-ons to awards ... to being full substitutes for awards*”.

This is precisely where we are today with this third stage of reforms. We are seeking to make agreements full substitutes for the choking award based system.

The reforms to date, for many parts of the economy, go only part of the way to the model of industrial relations described by Paul Keating, and given greater effect by the Howard Government's 1996 reforms.

There is more to be done.

There is still too much reliance on awards that are hugely complex, detailed and prescriptive.

The benefits realised by the individual agreements Rio Tinto has reached with their miners is still the exception rather than the norm.

Too many workplace agreements are merely add-ons to awards, rather than being comprehensive and tailored to the employee and employer's circumstances.

We still have a system where industry level “pattern bargaining” by unions imposes too many “one size fits all” agreements, with terms and conditions irrelevant and costly to individual workplaces.

We still have a system where third parties of all types

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can insert themselves too easily into processes to frustrate and work against employers and employees. Major productivity improvements are seriously stymied.

At the same time, numerous decisions – such as the controversial *Emwest* decision - have “largely thwarted” the processes of agreement making and added to the time and expense of making an agreement with employees .

This is why the Government is taking steps to encourage widespread agreement-making where the procedures are as simple as possible.

So, if we want to continue to grow the economy, continue to create jobs, continue to increase take home pay and keep interest rates low, we need to complete the reform of an out of date system which began 12 years ago. Standing still is not an option. The world will pass us by.

In the coming decades Australia faces significant looming pressure from within and without. Our economy continues to face dynamic pressure from external sources.

The greatest challenge this country faces is the challenge of an ageing population. Forecasts from the Productivity Commission show that the labour force is expected to grow by 320,000 people between 2002/03 and 2004/05. By contrast it will take two decades – from 2024-25 to 2044-45 - for the same growth to occur.<sup>32</sup>

In addition to an ageing population, the country faces pressure from external competition and unforeseeable shocks such as rising oil prices or natural disasters.

We live in an ever changing world and a dynamic labour market is critical to our survival.

The imminent pressures faced by Australia has led the OECD to conclude in its most recent economic survey that policy should “ensure that the labour market functions more effectively by promoting the negotiation of wages and employment conditions at the enterprise and individual level”.<sup>33</sup>

Likewise, only last week the Directors of the International Monetary Fund (IMF):

“welcomed the measures announced in the 2005 budget to expand labour force participation by encouraging the transition from welfare to work. They supported the proposed reforms of the industrial relations system aimed at further improvements in labour market flexibility that would facilitate additional gains in productivity and employment”<sup>34</sup>

The Business Council of Australia has also recognised the need for further reform of the workplace:

“We cannot take even our strong economic position, let alone the future, for granted ... [the economy] requires a new round of macro and micro-economic reform ... focussed on four key areas of the economy – taxation, workplace relations, infrastructure and reforming business regulation”<sup>35</sup>

The conclusions are supported by recently released figures showing that while Australia’s economy continues its robust performance, the one area beginning to lag is that of productivity growth. Further workplace reform will help to continue unlock this country’s productive capabilities.

The OECD has recognised this. The IMF has recognised this. The Business Council of Australia has recognised this. The Government has recognised this. In fact, only the Labor party and the union movement seem to have missed the need for reform.

Standing still is not an option.

## THE THIRD ROUND— GENUINE CHOICE

It is now nearly 12 years since the 1993 reforms commenced, and in the coming weeks and months, the Government will take the next step in the evolution of workplace relations in Australia.

The aim of the latest round of reform is to reach the objective espoused by Paul Keating in 1993, to “*find a way of extending the coverage of agreements from being add-ons to awards ... to being full substitutes for awards*”.

By doing so, the Government will enable employees and employers to agree on terms and conditions which best suit their circumstances.

To encourage widespread and creative agreement making, particularly for small and medium sized businesses, the government will minimise the costs and uncertainty associated with agreement making and remove the red tape surrounding their endorsement.

There are two changes which will make the processes for agreement making more accessible.

Firstly, the no-disadvantage test will be replaced by the Australian Fair Pay and Conditions Standard, a change which was mooted in 1996. This will be the first time

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that minimum standards have been legislated at a federal level.

I've already highlighted some of the reasons why the relationship between awards and agreements has been one of the major roadblocks hindering the take-up of agreements.

By introducing these consistent legislative minimums, the drafting of documents will be far easier. Rather than considering, and complying with, page after page of incomprehensible award jargon, when drafting their agreements, employers need only to comply with these five minimum standards. At the other end of the ratification process, the minimum legislated standard test will give more certainty to employers when lodging their documents.

Furthermore, by giving leeway in drafting, employers and employees will be able to reach agreement on issues which are better for both sides of the bargain. Not only can flexibilities which are unavailable under awards be included - such as permitting a parent to start outside of ordinary hours to let them finish in time to collect their children from work - but appropriate incentive structures can be included in the agreement to further enhance productivity. A deal of mutual benefit.

In addition to removing the roadblocks created by the no-disadvantage test, the approval process will be streamlined.

The Office of the Employment Advocate (OEA) will now be responsible for approving individual and collective agreements, moving the focus of agreement making away from an adversarial process.

Agreements will also operate on lodgement with the OEA, rather than the employee and employer having to wait for approval. For its part, the simpler requirements for agreements will mean that the OEA will be able to more expeditiously approve agreements, and agreements will be able to operate for five years, limiting the costs associated with continual re-negotiation.

I should emphasise that it will only be where genuine agreement is reached that conditions of employment will change, and the Government will provide adequate safeguards to protect the weaker members of the community.

Critical to facilitating genuine agreement making is making the system simpler - making a system that people

can understand and make informed decisions about.

Currently, there are six Industrial Relations Commissions in this country, and they have created a complex web of regulations which all but the most learned industrial lawyers have no chance of understanding, let alone implementing.

With over 130 pieces of legislation and more than 4000 awards across these jurisdictions, many hundreds of thousands of small businesses face the prospect of complying simultaneously with several Awards, a range of state and federal acts and numerous sets of regulation.

Even after negotiating this maze, each of these documents must be interpreted. They are drafted in archaic legalese. They are ambiguous and uncertain. They are "one size fits all". Even the AIRCs test case standard, the *Metal, Engineering & Associated Industries Award* contains seven pages to work out a person's annual leave entitlement.

The Government is committed to simplifying the country's industrial relations system by unifying the six systems by providing a set of standard industrial regulations across the nation.

We are not abolishing awards. The option of an award - as opposed to a collective or individual workplace agreement - will still be available. But awards will be reviewed by a committee to ensure that they meet the needs of the modern workforce.

Yet, the heart of these reforms is to allow employers, no matter how small, to replace hundreds of pages of unworkable award conditions with effective, intelligent, fair agreements of ten to fifteen pages.

In conjunction with these reforms to facilitate agreement making, the Government is introducing a number of other reforms designed to build upon its proven track record of economic management - to create more jobs and to deliver sustainable growth into the future.

A specialist body will be established, the *Australian Fair Pay Commission*, to ensure sustainable increases in the minimum wage and award classification wages.

We will also be addressing the current deficiencies in unfair dismissal law, by exempting employers with under 100 employees from unfair dismissal, and increasing the probationary period to 6 months for all employers.

A lot of fear has been generated in the media of late

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about these reforms, fear which is driven by the same people who opposed our 1996 reforms and, curiously, who started this process in 1993. These fears are clearly misplaced.

While the overwhelming majority of employers treat their employees with fairness and respect, there are always a few bad apples. The government is determined that agreement making involved genuine choice and is committed to protecting workers from any unscrupulous employer.

Unlawful dismissals will continue to be unlawful. It will continue to be unlawful to apply duress to an employee to sign an agreement. It will continue to be unlawful to sack an employee who refuses to sign an AWA.

There will be more “policeman on the beat” to ensure that employees aren’t coerced into agreements. There will be \$12 million spent over the next four years to help small businesses implement agreements that suit their business.

## CONCLUSION

In the coming weeks the next step in the evolution of workplace reform will be announced. It is the continuation of a process which was started under Labor in 1993, continued under this government in 1996 and which has contributed to the great resilience of our economy over the last decade.

The Government is about accelerating the cultural change taking place in our workplaces where we aim to see each and every employer treat their employees the way they themselves would like to be treated.

This change is occurring, but it will become commonplace the more we make our workplaces simpler, more flexible, more collaborative. Encouraging genuine agreement making at an individual or workplace level is the key to all of this.

In this way, we build trust in a work environment, cre-

ating a more stable, better skilled and more committed workforce; it raises confidence and teamwork, improves decision making and reduces the cost of doing business.

The evidence for this is there for all to see. Just as the predictions of the Labor party and the ACTU ten years ago that the labour market reform in 1996 would drive down wages, increase unemployment and slash working conditions, were proved to be demonstrably wrong, so it is that all those who seek to denigrate our further reforms will be proved wrong in the years ahead.

No system of industrial regulation can protect jobs and protect high wages if an economy is not strong and productive. We are determined to unlock more and more opportunities for productive activity and growth in each business.

By focusing on agreement making at the workplace and by simplifying workplace regulation, the government is creating an environment where the people of Australia, be they employee or employer, have more opportunities; the opportunity to decide what is best for you and your workplace; the opportunity to tailor working conditions which better suit your family circumstances; the opportunity for mutual gain; the opportunity to rise through the ranks; the opportunity to work.

This government’s agenda is facilitating genuine agreement at a workplace level.

It is about letting the people who know what’s best for them decide what’s best for them.

It is about continuing the strength of business and the growth of jobs.

It is about meeting the challenges of the future.

It is about enabling every workplace to have the opportunity to share in the rewards of agreement making.

It is about facilitating employees and employers talking to each other to achieve a mutually beneficial outcome.

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  - 16 Division 3, Part VIB *Industrial Relations Act* 1993
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