



EMPLOYERS' WORKPLACE LAW REFORMS NO GUARANTEE TO LIFT PRODUCTIVITY

Stop arguing: IR tsar's call to bosses, unions

EXCLUSIVE

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Fair Work Commission president Iain Ross has spoken out against the Business Council of Australia's proposed changes to workplace laws, saying they could increase profits and reduce wages but may not lift productivity.

In a rare intervention into the hotly contested public debate over industrial relations, Justice Ross challenged the claim by BCA chief executive Jennifer Westacott that the Fair Work Act's better off overall test was a "productivity killer".

He also took aim at "somewhat predictable" claims by Labor and the ACTU that the employer proposal was Work Choices Mark II or would leave thousands of workers worse off.

Calling on industrial relations participants to start building a "reform consensus", he said the policy debate was "much like two people shouting at each other across a crowded room in a different language".

"We are left with a largely binary policy exchange characterised by slogans, factually inaccurate statements and an absence of any evidence-based policy proposals," he said.

The *Weekend Australian* revealed last Saturday that the BCA wanted the "better off overall test" (BOOT) replaced with one that required groups of employees only to be better off than the award minimum rather than every employee.

Under the proposal, the Fair

Work Commission would ensure each class of employee, not each individual worker, would "not be placed at a net disadvantage overall" by an agreement when compared with the relevant award.

Industrial Relations Minister Christian Porter, who is conducting a review of the workplace relations system, has described the employers' reform push as "clearly a rational option to be considered" but the government would need evidence that it would work.

In a speech to the Newcastle Industrial Relations Society last night, Justice Ross said he agreed with Ms Westacott's observations that improving standard of living was dependent on improving productivity and that increasing productivity was about working smarter and more effectively, not working harder for less.

"However, describing the BOOT as 'a productivity killer' invites more scrutiny," he said. "I can readily see how changing the BOOT may reduce employment costs and increase profitability. It is less clear how such a change would increase productivity."

Justice Ross said Ms Westacott's exhortation that "we can't allow the EBA system to die the death of a thousand cuts" was an implicit suggestion that changing the BOOT would reinvigorate enterprise bargaining. But he said it seemed likely that the significant drop in employees covered by enterprise agreements was "for reasons that go beyond issues with the

BOOT", including the decline in union density and the consequent fall in union agreements.

Justice Ross said a second reason was that the modernising and simplification of the award system had removed one of the incentives for bargaining: "to have a single instrument covering an enterprise in order to avoid the complexity associated with multiple awards".

"I do not want my remarks to be taken as expressing any view about the BOOT, or any proposal to change it," he said.

"Nor do I want to be taken to be suggesting that the current legislative framework has nothing to do with the decline in bargaining. It is likely that the existing complexity has had some impact."

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AARON FRANCIS

Former ACTU leader Bill Kelly, who is critical of Labor's policy platform for the May election, in Melbourne's CBD

Stop arguing: tsar's call to CEOs, unions

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The Business Council has joined employer groups in pressing Mr Porter to back the politically sensitive change to the BOOT.

Mr Porter told *The Australian* in June that while such a move was "clearly a rational option to be considered", the government, in considering any policy change, would ask: "Is there cogent evidence that a change of that type will benefit employees across the board in terms of wage growth, benefit employment growth across the board, and does it make the Australian economy stronger?"

"And is there cogent evidence that suggests that it meets all those three criteria?"

Justice Ross said he was encouraged by Mr Porter's comments about the government relying on evidence to drive practical improvements to the workplace relations system.

He rejected Ms Westacott's claim that the commission changed its approach to how it applied the BOOT from 2016 when it handed down a key ruling on a Coles enterprise agreement.

He said the Fair Work Act allowed the commission to apply the test to classes of employees but "nowhere is it suggested that the BOOT is applied to the workforce as a whole".

The legislation did not provide evidence for Ms Westacott's assertion that the BOOT was

originally intended to mean that a workforce was better off overall than under the award, he said.

Justice Ross also rejected recent criticism by resource em-

ployers in *The Australian* that the rapid decline in the use of enterprise agreements was because of the complexity of the bargaining laws and the commission's "overtly technical and highly inefficient"

approach. He also hit back at claims by Australian Mines and Metals chief executive Steve Knott, without naming him, about agreement approval timeliness.

Justice Ross said criticism by financial services royal commissioner Kenneth Hayne of the quality of public discourse could



apply equally to both sides of the workplace relations debate.

He said the BCA proposal had “received the somewhat predictable response from unions and the opposition that it was Work Choices Mark II—or would leave thousands of workers worse off”.

“At a time when productivity and wage growth across most developed economies, including ours, is at low levels and the very nature of work is experiencing significant changes, the Australian

community deserves more from all of us,” Justice Ross said.

In a wide-ranging address, he said it was likely the future of work would require adaptability, life-long education and transitions between careers.

“Those who write about the future of work often refer to the use of technology and artificial intelligence to enhance human performance,” he said.

“They speak of a portfolio of different, and interesting, jobs ... of transitioning seamlessly from one career to another, embracing change and engaging in lifelong education. “That may be the future for some, but not all of us are going to be neurosurgeons.

“The future prospects of those with limited education and skills may be bleak.”



How The Weekend Australian broke the story last Saturday