

25 July 2025

Economic Reform Roundtable

Contact: ReformRoundtable@treasury.gov.au

RE: Consultation – Economic Reform Roundtable

The Australian Resources & Energy Employer Association (AREEA) welcomes the opportunity to submit recommendations on priority reforms to consider as part of the Government's Economic Reform Roundtable process.

AREEA is the largest and most diversified representative of the resources and energy industry and is also the sector's industrial relations specialist group.

AREEA represents our members on the National Workplace Relations Consultative Committee, the Council on Industrial Legislation and has had a significant role in all IR developments and reforms since Australia's federation.

Introduction

AREEA's recommendations focus on requests from the Roundtable for proposals to improve productivity, cut red tape and build economic resilience by attracting investment.

Australia's IR system is way too complicated.

Businesses are drowning in employment red tape and regulatory burden.

Too great a proportion of costs associated with employing people are in administration and compliance. They are not being invested in productivity enhancing measures in the workplace nor passed onto employees in the form of wages.

Employment red tape is holding back the ability and willingness of business to lift productivity, create more jobs and give existing employees more generous pay increases, commensurate with improved business performance.

If governments make it easier and less costly to employ people, greater job opportunities will be created for Australians and costs saved via reduced regulatory burden will ultimately be shared by all in higher wages and a more productive economy.

At the same time, far too much third-party interference has crept into the employment relationship.

At every stage possible and in almost every process or procedure, our IR system now puts trade unions or the Fair Work Commission right in the middle of employer/employee interactions – and right in the way of business getting done.

These interventions are a blight on productivity and employment outcomes.

If the Government was serious about lifting productivity, cutting red tape and building economic resilience, it should first carefully examine the dire impacts of Australia's workplace relations framework on all these objectives.

Any conversation about productivity cannot avoid fundamental considerations around how Australia regulates workplace relations.

Reform priorities

Restructuring Our IR Framework

1. Australia's employment safety net

The safety net needs significant attention. Ultimately, an overhaul is required that would see the antiquated system of industrial awards replaced by a simplified universal set of minimum employment standards that would apply to all employees in Australia.

A fundamental issue of Australia's current regulatory approach is it focuses overtly on employee protections and not productivity. To protect vulnerable employees, the system imposes a massive regulatory burden, with associated costs and productivity impacts, on all.

This is a sub-optimal approach, devoid of any careful thought about what regulatory system is needed to support modern, thriving businesses in a highly productivity economy.

In 2018, the Productivity Commission recommended a new safety net focused on lower skilled and educated worker demographics, noting at-risk workers will be mainly those who are in isolated labour markets or have lower skill and education levels that “frustrate their capacity to take up new jobs”.¹

A balanced framework must include an effective safety net that upholds minimum standards of pay, conditions and entitlements to protect vulnerable demographics of Australian workers. Such a description rarely applies to the resources and energy industry.

Further, in today's high-skilled labour environment, resources and energy employers must offer highly competitive market rates, often multiple times the award, to attract and retain talent. Awards therefore serve no purpose other than additional regulatory burden.

AREEA submits that a significantly simplified safety net would serve its purpose of protecting the vulnerable, while improving efficiency and productivity and reducing compliance and administrative costs of high-paying businesses.

Specific recommended actions:

- Replace the Modern Awards system with a new *Minimum Standards of Employment Act* that would underpin all employment – with an appropriate number of variances (fewer than 20) that focus solely on setting different minimum wages applying to different industries.
- When the replacement of awards with a simplified safety net is achievable, a deeming provision could guarantee existing employees cannot receive lower wages than the outgoing awards system for a period of 3-5 years.

Further demonstrating the merit of these recommendations, the Government should consider how the Modern Awards system could be so complicated that many large, well-resourced organisations have been incapable of avoiding significant underpayments issues relating to the misinterpretation and/or misapplication of award obligations.

Those include the ABC, BHP, Woolworths, Coles, McDonalds, Clayton Utz, Macquarie, Commonwealth Bank and even the Department of Employment and Workplace Relations.

If such organisations can fall afoul of the Modern Awards system, it should be asked what hope smaller, less sophisticated businesses have in achieving full compliance.

¹ Submission to the senate inquiry of the future of work and workers (2018) Productivity Commission

2. Special rules for high-income arrangements

Australia's future work regulation should cater for different categories of employment, especially those within the highest brackets of remuneration and individualised work flexibility.

To support the competitiveness of high-paying sectors and facilitate new ways of working, Australia must recognise that the level of regulation, compliance, protections and government-forced industrial organisation required for lower paying employment arrangements, largely need not unilaterally apply.

In AREEA's view, the majority of regulation and protections become unnecessary once a certain salary is reached.

There could be less regulation for employees above a nominated high-income threshold, and less regulation for high-paying employers.

A mechanism should also exist for employers in the highest paying sectors of the economy to completely remove the risk of protected industrial action in their workplaces.

This concept should not be viewed as overly remarkable.

Areas of Australia's present work regulation system – including the unfair dismissal provisions, fixed-term contract restrictions and contractor high income threshold - already recognise that certain protections are not needed above a certain remuneration level.

The extension of this rationale to the wider work system is not only logical but would significantly lift regulatory burden and productivity barriers for both employers and employees in the top tier of Australian industries.

This could be achieved via creation of a "high income individual statutory agreement" with the following features:

- High-income earners would have an option to enter into direct, individual employment agreements with their employers, effectively freeing parties from suffocating employment red tape.
- This option would allow for employees earning above a certain threshold to voluntarily remove themselves from the majority of the Fair Work system.
- On mutual agreement with employers, they could ensure their employment is as low burden from a regulatory and red tape perspective as possible.
- The threshold for entry into this new type of arrangement – potentially called a "High Paid Employment Contract" or similar – would be subject of consultation.
 - It could, for example, align with the high-income employment threshold for unfair dismissals and the independent contractor test.

Australia's productivity could be immediately boosted by facilitating a large proportion of the highest value employment arrangements to be exempted, on consent between employees and employers, from complex IR regulation that was designed around protecting the lower paid.

A Better Bargaining System

3. Enterprise bargaining must be stripped of its complexity.

Parties should be encouraged and supported by the system to bargaining if they choose to do so. Whether unions are involved or not should be a matter for the employees – not mandated or imposed by pro-union features within the regulatory framework.

Common observations of AREEA members include:

- Enterprise bargaining has become nothing more than a means of handing out wage increases without any corresponding improvements in productivity and/or efficiency and/or flexibility. Over many years, the process has deteriorated from genuine bargaining into positional wage bargaining, which in turn results in a systemic reduction in productivity.
- Recent decisions of the Fair Work Commission in the shadow of the “genuine agreement principles” mean in practice that approval by the FWC of any agreement validly made by an employer and its employees can be held up and/or stopped by interference by a union that does not agree with its terms.
- There is a complete lack of attention or even acknowledgment of productivity. This is despite productivity being at record low levels and an Object of the Act. Giving urgent attention to productivity outcomes in enterprise agreements will lead to greater economic prosperity and job security.
- Increased productivity can be assisted by the following actions:
 - a) Ensuring industrial instruments are prohibited from making payments to individuals for non-work-related purposes/using employer time to the benefit of third parties (e.g. delegates or DSP training);
 - b) Prohibiting payments to third party organisations excepting superannuation funds (redundancy funds, income protection funds etc.);
 - c) Mandating the prohibitions of non-work-related matters in enterprise agreements such as safety provisions, safety DSP clauses, workers’ compensation matters, etc.; and
 - d) Prohibiting the incorporation of Awards into EAs – if the purpose of EAs is to, inter alia, facilitate productivity increases in enterprises, 30+ years after the advent of enterprise bargaining is high time for EAs to stand alone.
- Additional recommendations to lift productivity through bargaining reforms:
 - e) The ‘Better Off Overall Test’ should be a simplified global assessment of large employee cohorts against the award, and the ‘Genuine Agreement’ requirement should be more readily satisfied where larger majorities of employees vote ‘yes’;
 - f) Kickbacks, payment to third party funds (e.g. income protection, redundancy funds) and provisions restricting or limiting freedom of association should be expressly prohibited;
 - g) Removal of delegates rights provisions: It is not up to the employer to pay for matters that benefit a third party, e.g. union officials.

Employees should not be discriminated against for being a delegate. However, any training should be on their own time. It provides no benefit to the employer nor productivity benefits; and

- h) The NES should be narrowed by removing items legislated elsewhere, such as superannuation.

4. **Multi-employer bargaining** should only be facilitated where employers, employees and/or their representatives agree.

- It must be recognised that non-consent multi-employer bargaining – such as the current provisions that allow for unions to compel employers to bargain collectively against their will – are inherently anti-competitive and unproductive, and result in adversarial workplace outcomes.
- The system cannot allow, as it currently does, for businesses with very different commercial and operational circumstances to be forced to bargain collectively.
- Pattern bargaining was effectively banned for decades for good reasons – it kills productivity. Enterprises need support to individuate in a market short on labour skills. Multi-employer bargaining is simply pattern-supported bargaining.
- The “Single Interest Authorisation” section within the FW Act’s multi-employer bargaining provisions should be repealed.

Balancing Employer-Union-Employee Interests

5. **Freedom of Association** must be restored to our overtly pro-union IR framework.

- Where seeking to initiate bargaining with an employer (either for a new or replacement agreement), unions must be required to demonstrate majority support of the relevant employees in all circumstances.
- Workplace delegates should be given appropriately limited rights to represent the interests of *other union members only*, confined to industrial matters where consultation processes are provided for in the Act or collective agreements and not during paid time or otherwise subsidised by the employer.
- Employers are (rightly) obligated to pay employees for the time the employee spends discharging their obligations *as an employee*. It is wrong for the employer to pay for time spent by the employee undertaking work for a third party.
- Introduction of a reverse onus provision on unions in relation to circumstances of unprotected industrial action (such as seemingly coordinated sick leave from large cohorts of the workforce). In such circumstances unions should be required to establish, on the balance of probabilities, they have not organised forms of unprotected industrial action.
- Payment into union-controlled funds (that provide significant kickbacks) must be curtailed (e.g. income protection and redundancy funds).
- If a union decides not to engage with a company which for commercial reasons needs a greenfields agreement, the company is for all practical purposes precluded from that particular site/contract. This is anti-competitive and inconsistent with freedom of association principles and the Objects of the Act.

6. **Union right of entry** must revert to a fair and balanced system, whereby officials cannot simply demand site access to pursue myriad union campaign and recruitment objectives.
 - Union right of entry rules must recognise that less than 10% of the private sector workforce are union members. In the resources sector it is common for union officials to enter a site with minimal (or no) members and having not been invited by any employee. Such visits are nothing more than union membership fishing exercises and, with employers having to divert resources to make arrangements for such visitors, can have substantial productivity impacts.
 - Union officials should only have site access rights when invited by their members and within the approved guidelines of the employer hosting them.
 - Union officials should not have access rights to investigate suspected underpayments or to assist on work health safety matters – they are not the statutory authorities in these fields and access for such matters is easily abused.
 - Reintroduce requirement that right of entry can only occur if the union is covered by an applicable industrial instrument.

7. **General protections** and **unfair dismissal** laws must be overhauled to better protect employers against vexatious claims and “forum shopping” behaviour.
 - The statute of limitations for all claims should be 12 months for the end of employment, not the six years at present.
 - Unfair dismissal laws should support businesses where a valid reason is found and due process was followed.
 - The primary concern is on the productivity and workplace culture impacts of having a third party – being the FWC – substituting their decision for that of business managers and reinstating and/or awarding compensation to dismissed employees.
 - The FWC should not be reinstating people or awarding compensation on their subjective determinations of “harshness”. Where a valid reason is determined, reinstatement should not be awarded.
 - Some employer associations have proposed an increase in the unfair dismissal threshold to 50 full-time-equivalent employees. This would require a corresponding amendment to general protections’ threshold matters as dismissed employees ineligible for the unfair dismissal regime access the general protections’ regime to file de facto unfair dismissal claims.
 - General protections’ claims must have an appropriate cap on compensation and the onus of proof must be on the applicant, not the respondent.

Other Productivity Measures

8. **Labour hire “same job same pay” (SJSP) laws** must be abolished or substantially amended.

The productivity impacts of the Albanese Government’s SJSP laws have not been properly considered. The effect of orders made to date – and more applications expected – is to substantially increase labour costs at some of Australia’s most productive and nationally significant mining and energy operations.

This will fundamentally impact long-term investment and employment decisions; all to the detriment of the Australian workforces, regional communities, and all the small and medium businesses that service large project operators along the supply chain.

While seemingly achieving a short-term “sugar hit” of higher wages for some labour hire workers (who were otherwise engaged on perfectly lawful above-award conditions), the long-term productivity and employment impacts will be enormous.

Market forces such as the ability for labour hire businesses to attract talent within a highly competitive labour market are the best indicator of whether above award rates of pay are fair and competitive within relevant industries and commercial settings.

Businesses that supply labour to clients via legitimate and lawful above-award arrangements provide an invaluable service to the economy, and they must be allowed to do so with certainty and confidence.

- AREEA’s fundamental position is the SJSP laws must be abolished.
- If repealing these laws is not palatable, AREEA’s secondary position is amendments are needed to ensure the SJSP laws are targeted at clear cases where there is evidence that labour hire is being used to undermine, undercut or avoid the payment of enterprise agreement wages:
 - The FWC should only be able to make an order where evidence proves the use of labour hire is primarily to circumvent payment of another interim enterprise agreement; and
 - Labour hire employees covered by an in-term enterprise agreement that was endorsed by or has a union party to it, must be exempt from orders.

9. **Small business should be properly defined** and recognised in the IR legislation.

- The definition of a small business should be 50 FTE employees.
- The various exemptions for small business should be reviewed to ensure they are substantial enough to actively encourage start-ups and entrepreneurship.

10. **Fair Work Commission (FWC) appointments** should be made via a new tripartite process.

It is an indisputable fact that governments of both political persuasions have made appointments to the national IR tribunal on a partisan basis for three decades.

In its first term (2022-2025) the Albanese Government made 22 appointments to the FWC, 18 of whom were or had worked with trade unions, while three more came from ALP/union aligned law firms. Only one had a background that included some business experience.

As a result, the FWC is now comprised of 54 members: 29 appointed by ALP governments and 25 by Coalition governments. Twenty-two have trade union backgrounds and at least six more are from ALP/union aligned law firms and legal practice.

In short, more than 50% of the FWC’s present members have worked directly for trade unions or acted for them before being appointed by the ALP to the FWC.

It should also be noted that in its first term the Albanese Government enacted various

amendments to Australia's IR framework which have given FWC members unprecedented powers to set wages and conditions in business settings.

Given this expanded role for the FWC it would be ideal for the tribunal to include more members with some real-life experience in running a business. Of the current 54 members, only one has such experience.

Before appointments became increasingly partisan in nature – commencing in the Hawke Government era – the process was bi-partisan and far less controversial.

A committee involving the IR Minister, the heads of Australian Chamber of Commerce and Industry (ACCI) and Australian Council of Trade Unions (ACTU) together with a relevant Department official would meet and consider the skill set and background required of future members.

This was designed to ensure some semblance of a competency assessment and institutional balance occurred with new appointments.

- AREEA recommends the Government establish an apolitical, non-partisan national IR tribunal appointment process, seeking the FWC contains the wide experiences, backgrounds and views required by its expanded role.
- This could be achieved via a new tri-partite committee for FWC appointments, comprising the IR Minister, ACTU, and business representatives.
- A clear and consistent appointment criteria would set out the competency and merit-based considerations required for future FWC appointments.
- The committee would make recommendations to the Minister for Workplace Relations who would continue to determine all future FWC appointments.

Note, Attachment 1 to this submission identifies the current composition of the FWC, including which political party appointed them, and details those 22 appointments made to the FWC during the Albanese Government's first parliamentary term (2022-2025).

Once again, AREEA appreciates the opportunity to recommend these productivity-boosting options for consideration.

Yours sincerely,



STEVE KNOTT AM
Chief Executive

Attachment 1

Composition of the Fair Work Commission: At 25 July 2025

PRESIDENTIAL (Total 26)		
A Hatcher M	P	■
IC Asbury F	VP	■
M Gibian M	VP	■
M Binet F	DP	●
WR Clancy M	DP	●
LE Dean F	DP	●
A Colman M	DP	●
I Masson M	DP	●
A Beaumont F	DP	●
A Millhouse F	DP	●
T Saunders M	DP	●
N Lake M	DP	●
G Boyce M	DP	●
B Cross M	DP	●
MJ Easton M	DP	●
A Bell M	DP	●
T Dobson F	DP	●
PJ Hampton M	DP	■
BM O'Neill F	DP	■
J Wright F	DP	■
T Roberts M	DP	■
P O'Keeffe M	DP	■
A Slevin M	DP	■
A Grayson F	DP	■
T Butler F	DP	■
K Farouque M	DP	■

COMMISSIONERS (Total 28)	
PJ Spencer F	●
CF Simpson M	■
T Lee M	■
B Riordan M	■
T Cirkovic F	●
C Platt M	●
K Harper-Greenwell F	●
J Hunt F	●
S McKinnon F	●
L Yilmaz F	●
S Mirabella F	●
P Ryan M	●
A Matheson F	●
P Schneider M	●
S Durham F	■
S Connolly M	■
S Crawford M	■
M Perica M	■
P Lim F	■
S Allison F	■
OT Tran F	■
E Thornton F	■
J Fox F	■
B Redford M	■
D Sloan M	■
T Clarke M	■
A Walkaden M	■
J Rogers F	■

Total Coalition = 25

Total ALP = 29

ALP Fair Work Commission Appointments: 2022-2025

MEMBER	POSITION APPOINTED	BACKGROUND
Ms Judith Wright	Deputy President	Deputy Secretary, Australian Municipal, Clerical and Services Union
Mr Thomas Roberts	Deputy President	Senior Legal Officer of the Australian Council of Trade Unions
Peter O'Keeffe	Deputy President	Branch Secretary, Shop Distributive and Allied Employees' Association
Alexandra Grayson	Deputy President	Principal Lawyer with Maurice Blackburn Lawyers
Sharon Durham	Commissioner	Senior Director, Industrial Relations and Workplace Arrangements with Queensland Health, Operations Manager with the Queensland Plumbers Union, Lead Industrial Officer with the Queensland Council of Unions, and Industrial Advocate with Together Queensland
Mr Tony Slevin	Deputy President	Former Legal Officer CFMEU, Barrister
Mr Scott Connolly	Commissioner	ACTU
Mr Stephen Crawford	Commissioner	ACTU
Mr Mark Perica AM	Commissioner	CPSU
Ms Pearl Lim	Commissioner	ASU
Ms Susie Allison	Commissioner	NUW
Ms Oanh Thi Tran	Commissioner	CFMEU Manufacturing
Ms Emma Thornton	Commissioner	ACTU
Mr Mark Gibian SC	Vice President	Labor Barrister / former TWU
Ms Julia Fox	Commissioner	National Assistant Secretary at the Shop, Distributive and Allied Employees' Association
Mr Ben Redford	Commissioner	Executive Director at the United Workers Union
Ms Terri Butler	Deputy President	ALP MP / Maurice Blackburn Lawyers
Damien Sloan	Commissioner	NSW IRC, Law firms, Toll Holdings
Mr Kamal Farouque	Deputy President	Principal Lawyer at Maurice Blackburn
Trevor Clarke	Commissioner	Manager, Industrial and Legal, at the Australian Council of Trade Unions (ACTU)
Adam Walkaden	Commissioner	National Legal Director of the Mining and Energy Union
Jessica Rogers	Commissioner	Communications, Electrical, Energy and Plumbing Union

Note: Then WR Minister Tony Burke also appointed the President and both Vice Presidents during this period.