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Forward with Fairness:

A Business Perspective on Labor's Reform Agenda

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Introduction and setting the scene

Thank you Chancellor – thank you also to the organisers of the Foenander Lecture for inviting me here.

It is indeed an honour to be asked to give this public lecture, following in the footsteps of the likes of Professor Joe Isaac, Bill Kelty and my erstwhile colleague and former Corrs partner, Ian Macphee.

I note that although this is a privilege that is conferred only 'once in a lifetime', it must be a first for two partners from Corrs to have addressed this august forum, so I will try to make the most of it!

The title of my address suggests that I might examine in some detail the current workplace relations reform process being undertaken by the Rudd Government.

I was, again, honoured and privileged to be asked by the Government to chair its Business Advisory Group (BAG) – to ensure that the voice of the business community is heard as the Government translates its *Forward with Fairness* policy into legislation.

To be clear, it is not the job of the BAG to dictate policy. Rather it is an important mechanism for Deputy Prime Minister Gillard, who has participated in all meetings to date, to hear directly from CEOs of large businesses the practical implications of *Forward with Fairness*.

And certainly, the BAG has been focused on the key issues that matter to business in this process.[1] These include:

- Ensuring that the new collective bargaining framework, and 'good faith bargaining' obligations, do not impose unreasonable constraints on the rights of employers to

[1] See also (for example) Ron Baragry, 'An Employer Perspective' (2008) 18 *The Economic and Labour Relations Review* 97; Heather Ridout, *Speech to the Industrial Relations Society of Queensland's Patrons Lunch*, 16 May 2008.

negotiate agreements suited to each enterprise. Limiting the content of agreements to 'matters pertaining' to the employment relationship is also very important to business.

- Avoiding unnecessary duplication in standards making up the 'safety net' – this means carefully considering the interaction between the National Employment Standards, awards, agreements, and common law contracts for non-award employees.
- The capacity to enter into individual arrangements under awards and collective agreements that deliver genuine flexibility.
- Maintaining the current restrictions on industrial action, strike pay, and union right of entry – critical issues for employers in the resources sector and 'downstream' industries, in particular.
- A smooth transition from the current regulatory agencies (eg the Australian Industrial Relations Commission, the Workplace Authority, and the Workplace Ombudsman) to Fair Work Australia (FWA) – a body that must be responsive to the needs of all stakeholders and described by the Prime Minister as a one-stop shop and "… shiny new agency to administer new workplace laws".
- Sensible transmission of business rules – in a dynamic economy, employers should not be 'saddled up' with irrelevant awards and agreements when they acquire new businesses.
- A workable, quick and fair process for resolving unfair dismissal claims – business simply cannot afford a return to increased complexity in unfair dismissal laws.

However, rather than going into the detail of these issues,[2] I want to take a broader view of the current reform process in Australia from a business perspective and to discuss with you where I believe this all fits–both in an historical, and a global, context.

After all, as important as this subject is to labour relations experts such as you, in the end I worry about the individuals and families who will be affected by any changes and the uncertainty that change will bring – and it is important that I seek to put this all in the broader context of where I believe this change fits in for business as part of Australia's quest to maintain and advance its national competitiveness and ultimately our mutual prosperity.

I should stress these are my personal views. Although I would like to thank my colleagues Anthony Forsyth and Annabelle Wilson for helping me prepare this lecture.

Key objectives of workplace reform

I will begin by highlighting the key objectives of the Government's reform agenda, as outlined in *Forward with Fairness* by the then opposition leader, Kevin Rudd and deputy opposition leader, Julia Gillard:[3]

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[2] They are examined further (in some detail) in Chapter 9 of Anthony Forsyth, Breen Creighton, Val Gostencnik and Tim Sharard, *Transition to Forward with Fairness: Labor's Reform Agenda*, Thomson Lawbook Co., 2008.

[3] ALP, *Forward with Fairness: Labor's Plan for fairer and more productive Australian workplaces*, April 2007, page 1. See also the recent restatements of the Government's reform objectives in The Hon Julia Gillard MP, Minister for Employment and Workplace Relati[3] They are examined further (in some detail) in Chapter 9 of Anthony Forsyth, Breen Creighton, Val Gostencnik and Tim Sharard, *Transition to Forward with Fairness: Labor's Reform Agenda*, Thomson Lawbook Co., 2008.

> As a nation, we face many important challenges …
>
> We confront the challenge of keeping our nation competitive in the global economy and ensuring fairness at work for all Australians. ...
>
> Labor believes we can have both economic prosperity and fairness.
>
> We believe our economy can go forward, but with fairness.

After noting Labor's role in the move away from centralised wage fixing when it was last in government, *Forward with Fairness* continues:

> Australia now needs a third round of economic reform to meet the needs of our 21st century economy. Labor understands a critical component of this next vital reform project must be a new industrial relations system based on driving productivity in our private sector.

From this, I discern three clear objectives. The Government aims to come up with a workplace relations system that balances the need for:

- national competitiveness;
- fairness for employees; and
- the flexibility and productivity needs of businesses.

Reconciling this troika of competing objectives is no easy task. But it is a project that is critical to Australia's future economic and social prosperity. The importance of labour market flexibility as a determinant of national competitiveness is highlighted by the World Economic Forum's most recent 'Global Competitiveness Index' (GCI):[4]

- Labour market efficiency is one of the '12 pillars of competitiveness' against which the GCI assesses national economic performance – along with (for example) macroeconomic stability, high-quality infrastructure, financial market sophistication, technological readiness and innovation.[5]
- Australia is ranked 19th in the GCI (out of 131 countries) – ahead of Ireland, New Zealand and China; but behind the USA (which tops the list), the Scandinavian countries, Japan, the UK and Canada.
- And while we came in 13th on labour market efficiency, 'restrictive labour regulations' were identified as the third-most 'problematic factor for doing business' in Australia (after tax rates, and tax regulations).
- Significantly, the GCI also observed several labour market factors as 'notable competitive disadvantages' for Australia – such as the inflexibility of wage determination, non-wage labour costs, and hiring and firing practices.

So we still have quite a bit of work to do as a nation, to get labour market regulation better aligned with the other key conditions for economic success if we want to improve our national competitiveness.

The two main themes of this lecture

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[3] ALP, *Forward with Fairness: Labor's Plan for fairer and more productive Australian workplaces*, April 2007, page 1. See also the recent restatements of the Government's ons, *Speech to the Fair Work Australia Summit*, Sydney, 29 April 2008, and *Speech to the RSL and Services Clubs National Conference*, Tweed Heads, 22 July 2008.

[4] World Economic Forum, *The Global Competitiveness Report 2007-2008*, available at: http://www.gcr.weforum.org/.

[5] The remaining 'pillars' are: the institutional environment, health and primary education, higher education and training, goods market efficiency, market size and business sophistication.

I now want to focus more closely on the objectives of workplace reform that I have identified, by developing two key themes.

First, I will look at the current reform process in its historical perspective:

- The essential argument I want to make here is that Australia's system of workplace regulation grew out of an economic and business landscape that has long been left behind.
- And while we have moved away from the conciliation and arbitration framework established in 1904, much of the architecture of the 'old system' still shapes our workplace laws and how we think and talk about workplace regulation.
- To give businesses the best opportunity to be competitive in our modern, services-driven economy – and to meet the needs of our diverse, knowledge-based workforce – we need to take a fresh look at workplace regulation and change how we talk about it.
- In short, we need to see the current reform process as a bridge to the next generation of reform.

Second, I will consider workplace reform in Australia from a global perspective:

- We are not the only nation that is striving to match the goals of competitiveness, flexibility and fairness.
- Many others are too, including China, the UK and other member States of the European Union. At EU level, there is also considerable focus on the concept of 'flexicurity' – combining workplace flexibility (for employers), with employment security (for employees).
- In the USA, there is now a significant debate going on in Congress about the nature and extent of labour regulation.
- These international trends illustrate that 're-regulation' is a common phenomenon. And while this inevitably involves limits on labour flexibility, policy-makers around the world seem to be judging that this is the kind of 'trade-off' that their citizens want to maintain support for and make globalisation work for the masses.
- Our key trading partners are <u>not</u> engaging in any retreat from globalisation – and nor should Australia. A continued commitment to an open international trade and investment policy is of paramount importance to this country's business community – and, ultimately, to all Australians.

1. The lessons of history

In determining the shape of workplace regulation, it is important to consider how businesses are structured, how they operate, and what the broader economy looks like.

<u>The economic and workplace setting in 'Fortress Australia'</u>

If we step back in time to the late 1890s/early 1900s, we can see that the federal conciliation and arbitration system that emerged in 1904 was closely linked to – and designed to meet the needs of – contemporary business and economic conditions.

At the turn of the last century, the Australian economy was characterised by:[6]

- a relatively under-developed manufacturing sector, with local firms '[struggling] to compete with imports from more industrialised economies';
- most businesses operating as sole proprietorships or partnerships (many of these were family-run firms);
- 'numerous small single-product businesses that served local markets';
- the dominance of resource industries (eg gold and base-metal mining) and associated service industries (eg merchanting, financing, transporting);
- the exporting of raw materials for processing/production by foreign manufacturers, which were imported back to Australian retailers and a country where;
- the pastoral, agricultural and mining industries made up 30% of GDP (in 1901); service industries for the import and export trades (eg government, finance, distribution), only a third of GDP; and manufacturing, only 12% of GDP.

The policy-makers of the fledgling Federation settled upon 'New Protection'[7] as the preferred model for ordering the national economy. The two key, intertwined elements of New Protection were:

- first, significant tariff protections for manufacturers along with various types of subsidies for the farming sector: 'This combination of rising tariffs and subsidies taxed the principal export industries, wool and minerals, to bring about a transfer of resources into lower productivity and city-based manufacturing and service industries.'[8]
- second, the compulsory conciliation and arbitration system: 'Workers shared in the rents generated by the wedge between domestic and import prices through a centralised wage fixing system … that tied minimum wages to price increases.'[9]

Through these mechanisms: ''New Protection' not only assured employers security from low-wage imports but established the principle that labour (not just commodities) should be shielded.'[10]

Tariff protections succeeded in assisting the development of secondary industries and factory production.[11] However, they also contributed to the development of a 'closed' or 'sheltered' economy – the link between wage-setting and protectionism helped diversify the economy, but did not create the right conditions for international competitiveness.[12]

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[6] See D T Merrett, 'Business Institutions and Behaviour in Australia: A New Perspective' (2000) 42:3 *Business History* 1, at pages 5-6; Simon Ville and D T Merrett, 'The Development of Large Scale Enterprise in Australia, 1910-64' (2000) 42:3 *Business History* 13, at pages 19, 30.

[7] See for example Paul Kelly, *The end of certainty: The story of the 1980s*, Allen and Unwin, 1992, pages 4-9; Gary Cross, 'Labour in Settler-State Democracies: Comparative Perspectives on Australia and the US, 1860-1920' (1996) 70 *Labour History* 1, at pages 14-16; Stephen Garton and Margaret McCallum, 'Workers' Welfare: Labour and the Welfare State in 20th-Century Australia and Canada' (1996) 71 *Labour History* 116, at pages 124, 128.

[8] Ville and Merrett (2000), above, page 26.

[9] Ville and Merrett (2000), above, page 27.

[10] Cross (1996), above, page 15.

[11] Arthur McIvor and Christopher Wright, 'Managing Labour: UK and Australian Employers in Comparative Perspective, 1900-50' (2005) 88 *Labour History* 45, at page 47.

[12] Cross (1996), above, page 15.

Work relations in the early 1900s essentially followed a 'command and control' model. The low capitalisation of Australian industry meant that many workers were engaged in strenuous manual labour.[13] As manufacturing expanded, shopfloor relations developed around the control of the workforce by a working proprietor (in smaller firms) or a foreman (in larger enterprises). These various forms of supervision were intended to maximise output, and maintain close oversight of employees' conduct and productivity.[14]

Much has been written about the origins and nature of Australian conciliation and arbitration,[15] so I will simply emphasise a few key points here. The bitter industrial battles of the 1890s led the framers of the Australian Constitution to make provision for federal legislative power over interstate industrial disputes.[16] The *Conciliation and Arbitration Act 1904* (Cth), which emerged only after a tumultuous legislative process, provided for the establishment of a conciliation and arbitration court; encouraged the development of employer organisations and unions; and discouraged strikes and lockouts.[17]

The influence of the 1904 legislation on the subsequent development of Australian workplace regulation, and on the industrial 'psyche' of the nation, was profound. Most importantly, it instituted the concepts of the 'living wage' and 'wage justice', based on uniquely Australian notions of egalitarianism and a 'fair go'.[18]

Compulsory arbitration also provided a boost to the nascent trade union movement, with union membership rising from 10% of the workforce in 1905 to 25% in 1913.[19] And while employers had opposed conciliation and arbitration vigorously, they too derived benefits from it: for example, minimum wages enabled larger firms to resist competition from smaller, low-wage rivals.[20]

So it is clear (as The Hon Justice Kirby has put it) that: 'the 1904 Act grew out of the legal and economic environment of the late nineteenth century'.[21] However, I must respectfully disagree with the remainder of His Honour's observation: 'so today the successor Act and the Constitution mould themselves to the economic and social realities of our age.'[22]

I will now explain how it is that I think Australia's system of workplace regulation has failed to keep pace with changes in both the economy, and the world of work.

<u>The economic and workplace setting in 'Networked Australia'</u>

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[13] Stuart Macintyre, 'Paradise Lost: Conditions for the Workers 1900-1950' (1989-1990) 2:2 *Bulletin of the Centre for Tasmanian Historical Studies* 62, at page 64.
[14] McIvor and Wright (2005), above, pages 47-48.
[15] See Stuart Macintyre and Richard Mitchell (eds), *Foundations of Arbitration: The Origins and Effects of State Conciliation and Arbitration in Australia 1890-1914*, Oxford University Press, 1989; Joe Isaac and Stuart Macintyre (eds), *The New Province for Law and Order: 100 Years of Australian Industrial Conciliation and Arbitration*, Cambridge University Press, 2004.
[16] The Hon Justice Michael Kirby, 'Industrial Conciliation and Arbitration in Australia – A Centenary Reflection' (2004) 17 *Australian Journal of Labour Law* 229, at pages 231-234; see also Cross (1996), above, pages 11-13; Garton and McCallum (1996), above, page 128.
[17] Kirby (2004), above, pages 234-237.
[18] Kirby (2004), above, page 238, referring to Justice Higgins' famous *Harvester* judgement of 1907; see also Kelly (1992), above, pages 8-9; and Joe Isaac, 'Australian Labour Market Issues: An Historical Perspective' (1998) 40:4 *Journal of Industrial Relations* 690, at pages 693-694, 698.
[19] Cross (1996), above, page 15; see also McIvor and Wright (2005), above, pages 53-54; Colin Forster, 'The economy, wages and the establishment of arbitration' in Macintyre and Mitchell (1989), above, 203 at page 205.
[20] McIvor and Wright (2005), above, page 54.
[21] Kirby (2004), above, page 238.
[22] Kirby (2004), above, page 238.

Since the 1980s, the Australian economy has been transformed from the isolated protectionism of the Federation era.[23] The tariff walls have been virtually dismantled in the interests of making local firms more efficient and internationally competitive. As a consequence, manufacturing industry has declined from its peak in the early 1960s (when it accounted for more than a quarter of GDP) – by 2005, the manufacturing sector represented less than 12% of output and employment.

Agriculture and mining accounted for 8.5% of Australia's output in 2005, 5% of the workforce, and 55% of exports – while services (eg wholesale and retail trade, transport and communications, finance, property and business services, tourism, and government services) made up more than 70% of GDP and almost three-quarters of the workforce.

The major structural reforms of the Australian economy over the last 25 years – including (along with tariff reductions) financial market deregulation, greater openness to foreign investment, privatisation, and competition policy[24] – have led to a period of strong economic growth, low inflation and high employment. More recently, however, growth rates have slowed – although the resources boom has ensured continuing economic prosperity in Western Australia and Queensland.

Increasingly, Australian companies – like those in many other countries – are operating in global supply chains, or: 'transnational production networks, anchored by multinational corporations, ... [which] shape the pattern of global production, and, ultimately, the pattern of international trade'.[25] This has also given us a new term to savour: 'supply chain diplomacy'!

Globalisation has also brought with it greater international financial integration, foreign investment, trade liberalisation[26] – and new forms and structures of work that reflect the new globalised businesses. Some examples of the changed nature of employment relations in 'the global workplace' include:

- a shift from 'internal labour markets' (ie pay, training and promotion systems based around hierarchical job structures) – to much 'looser' connections between firms and workers that are focused on cross-utilisation of employees (so firms can adapt quickly to changed market conditions), and recognition/reward of the 'intellectual capital' of staff;[27]
- '[t]o cultivate and capture employee knowledge, skills, and imagination, firms have designed various types of workforce empowerment programs to give bounded discretion to relatively low level employees';[28]

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[23] The following discussion of Australian economic conditions draws upon Saul Estlake, *An Introduction to the Australian Economy*, 4th edition, January 2007, especially pages 1-2, 7, 9, 15-16.

[24] On the economic reforms of the Hawke/Keating Labor governments in the 1980s/early 1990s, see further Kelly (1992), above. For a more recent account, taking in also the Howard Coalition government's period of office, see George Megalogenis, *The Longest Decade*, Scribe, 2008 revised edition.

[25] Manuel Castells, 'Global Informational Capitalism', quoted in Brian Bercusson and Cynthia Estlund, 'Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions' in Brian Bercusson and Cynthia Estlund (eds), *Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions*, Columbia-London Law Series, 2007, 1 at page 3.

[26] Bercusson and Estlund (2007), above, page 3.

[27] Katherine Stone, 'A New Labor Law for a New World of Work: The Case for a Comparative-Transnational Approach', UCLA School of Law, Law & Economics Research Paper Series, Research Paper No. 07-02, 2007, pages 3-4; Katherine Stone, 'Flexibilization, Globalization, and Privatization: Three Challenges to Labour Rights in Our Time', in Bercusson and Estlund (2007), above, 115 at page 116.

[28] Stone, 'A New Labor for a New World of Work' (2007), above, page 4, referring to Katherine Stone, *From Widgets to Digits: Employment Relations for the Changing Workplace*, Cambridge University Press, 2004.

- abandonment of the 'implicit promise of employment security' in favour of 'employability– the ability to acquire skills that will enhance [employees'] opportunities not just in one firm but in the broader labour market as well';[29]
- 'just-in-time' production methods, and production 'chains' stretching across the world (in which workers in several different continents may be involved in producing one item);[30]
- widespread use of transparent incentive plans based on individual and/or team 'KPIs' (key performance indicators) aligned to firm objectives;
- as well as the multinationals, growing numbers of employers are small businesses with links to other firms through franchises and joint ventures – and increasingly, workers are engaged as casuals, homeworkers, subcontractors, or on some other flexible basis.[31]

This is the new world economic order that our system of workplace regulation has to adjust to and it will be different again in 5 years. Whatever system we have it also has to cater for an ever more diverse workforce, with its complex age and generational-mix – and workers who want flexibility in working time and remuneration arrangements, to suit their aspirational, technologically-geared lifestyles.[32]

'Flexibility' is now a two-way street: it is no longer simply about what employers need, but also what employees demand. As the investment firm, Mercer, has recently highlighted: flexibility in working conditions is becoming a critical factor in 'the heightening war for talent'.[33]

Forward with Fairness 'plus': the further reforms Australia needs

I am pleased that Deputy Prime Minister Gillard, has acknowledged many of these developments – concluding in a recent speech that: 'This is [an] epoch-defining age – similar in scale and scope to the industrial revolution.'[34]

And I acknowledge that through implementation of the *Forward with Fairness* policy, the Government is trying to get the balance right in the system of workplace relations regulation.

But in my view, the post-Work Choices *Workplace Relations Act* – and Labor's proposed reforms will not on their own:

- deliver the kind of flexibility that the modern Australian workplace requires; or
- assist the project of boosting our national competitiveness.

They will need to be reviewed over time.

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[29] Stone, 'A New Labor for a New World of Work' (2007), above, page 4.
[30] Judy Fudge, 'Precarious Employment in Australia and Canada: The Road to Labour Law Reform' (2006) 19 *Australian Journal of Labour Law* 105, at page 108.
[31] Fudge (2006), above, page 108.
[32] See further John W H Denton, 'The 21st Century Leadership Challenge', *Speech to the Global Business Leaders Forum*, Mumbai, 18 February 2008, available at: http://www.corrs.com.au/corrs/website/web.nsf/Content/DentonJohn.
[33] AAP, 'Flexibility now at heart of workplace, investment firm', 18 June 2008.
[34] The Hon Julia Gillard MP, Minister for Employment and Workplace Relations, *Speech to the 2008 Workplace Research Centre Annual Conference*, Sydney, 20 June 2008.

Certainly, the economic reforms that I spoke of earlier have included labour market reform. Beginning in the 1980s, we have had the Accord, award restructuring, union mergers, and the all-important shift to enterprise bargaining.[35] Then came non-union agreements, AWAs[36] and – under Work Choices – the abolition of the no disadvantage test, the move towards a national workplace relations system, and the final shelving of compulsory conciliation and arbitration/minimum wage-setting by the AIRC.[37]

Many would no doubt suggest that Work Choices – and the High Court's endorsement of it[38] – was a 'quantum leap' away from the Federation-era IR system based on the constitutional labour power. And in some respects, I would agree with them.

However, just consider how much of the 'old' system (or the remnants of it) we will still be left with and how much of the language will remain common, even after Labor's *Forward with Fairness* policy is fully implemented:

- we will still have industrial awards (albeit 'modernised' ones), that will contain fairly detailed regulation of employment terms and conditions;
- there will still be an arbitral body of sorts (FWA), with significant powers – indeed in some areas, it will have greatly enhanced powers;
- the extensive rules governing registered employee and employer organisations will still be there in the legislation – along with the voluminous provisions dealing with union right of entry, freedom of association, and protected industrial action;
- added to this, we will have a swag of new provisions regulating bargaining – designed mainly to deal with agreement negotiations between employers and unions.

This all adds up to a continuing regulatory focus on the concerns of a bygone industrial era – big institutions, employer bodies, and trade unions. But the Australian economy – and workforce – have moved on and is still moving.

I am firmly of the view that in addition to the important changes to the legislative framework that Labor is implementing, further reforms will be needed – to drive the productivity agenda that the Government is also committed to.[39] And the policy work on this broader agenda has to begin now.

This means we need to do some serious 'blue sky' thinking about how government can enable firms to pursue strategies of alignment and engagement with the workforce – and assist them to become the kind of innovative, 'high performance' organisations that will be critical to Australia's future competitiveness.

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[35] See for example Kelly (1992), above, chapter 6; Isaac (1998), above, pages 704-708; Joe Isaac, 'The Deregulation of the Australian Labour Market' in Joe Isaac and Russell Lansbury (eds), *Labour Market Deregulation: Rewriting the Rules*, The Federation Press, Sydney, 2005, 1.

[36] See for example Richard Mitchell, 'Juridification and Labour Law: A Legal Response to the Flexibility Debate in Australia' (1998) 14 *International Journal of Comparative Labour Law and Industrial Relations* 113; David Peetz, *Brave New Workplace: How Individual Contracts are Changing Our Jobs*, Allen and Unwin, 2006.

[37] For an overview of the legal changes introduced by Work Choices, see for example Anthony Forsyth, 'Decentralisation and 'Deregulation' of Labour Relations through 'Ultra-Regulation': Australia's 2005 Labour Law Reforms' in S Ouchi and T Araki (eds), *Decentralizing Industrial Relations: The Role of Labour Unions and Employee Representatives*, Kluwer Law International, 2007, 125.

[38] *News South Wales v Commonwealth* (2006) 229 CLR 1.

[39] See (most recently) The Hon Julia Gillard MP, Minister for Employment and Workplace Relations, *Speech to the Australian Workers' Union Industry 2020 Lunch*, Melbourne, 8 August 2008.

The Government should look closely at some overseas models here – such as Ireland's National Centre for Partnership and Performance,[40] and New Zealand's Workplace Productivity Project.[41] These overseas initiatives provide striking examples of government capacity-building for workplace innovation – helping businesses to create productive workplace cultures, through information, training, benchmarking, advisory and other support services.

As I will show in a moment reflecting international trends, the Rudd Government with 'Forward with Fairness', is embarking on a limited 're-regulation' of our national labour laws – mainly, to restore a measure of fairness that the electorate has expressed that it wants to see in the workplace relations system.

What I am suggesting is that this cannot be the end of the workplace reform process – *Forward with Fairness* should be seen as a bridge to the next generation of reform, and all stakeholders need to focus now on how we will deliver the all-important flexibility/productivity and competitiveness components of the reform equation.

2. A global perspective

The current workplace reform debate in Australia is a local manifestation of the challenge policy-makers around the world have faced for some years – how to 'humanise global capital',[42] or as the EU Trade Commissioner Peter Mandelson recently put it: 'harnessing the power of globalisation, and overcoming its dark side … in order to distribute the fruits of openness more equally'.[43] This is now occurring in a context where leaders in public policy debate are, increasingly, questioning the benefits of globalisation.

For example, Bill Clinton's former Treasury Secretary (now Harvard Professor), Larry Summers, detects a growing level of unease in the United States with the long-unchallenged consensus favouring an internationalist economic policy. This can be seen (he argues) in the 'increasing attacks on foreign investment in the US', opposition to free-trade deals, and 'the gnawing suspicion of many that the very object of internationalist economic policy – the growing prosperity of the global economy – may not be in their interests'.[44]

Drilling down a bit further, Summers contends that workers have borne the brunt of the competitive pressures that global integration has imposed on developed economies. In closed economies, workers reap wage increases from investments in productive capital and corporations care about the state of the nation's workforce and infrastructure. However, in an open economy where business investments (eg in innovation, brands, equipment) can be pooled with a global labour force:

> Workers no longer have the same stake in productive investment … . Companies, in turn, come to have less of a stake in the quality of the workforce and infrastructure in their home country when they can produce anywhere. Moreover businesses can use the threat of relocating as a lever to extract concessions regarding tax policy, regulations and specific subsidies. Inevitably the cost of these concessions is borne by labour.[45]

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[40] See http://www.ncpp.ie/.
[41] See http://www.dol.govt.nz/workplaceproductivity/.
[42] See M Edwards, 'Humanising Global Capitalism: Which Way Forward?' in A Giddens (ed), *The Global Third Way Debate*, Polity Press, 2001, 384.
[43] Quoted in 'A club in trouble', *The Guardian Weekly*, 8 August 2008 (editorial on the collapse of the Doha round of international trade talks).
[44] Lawrence Summers, 'America needs to make a new case for trade', *Financial Times*, 28 April 2008.
[45] Lawrence Summers, 'A strategy to promote healthy globalisation', *Financial Times*, 5 May 2008.

And this means the public's support for the process of globalisation[46] should not be taken for granted. Why?: Because the benefits of growth are not seen as flowing fairly. Since 1979, the share of pretax income going to the top 1 percent of American households has risen by 7% points to 16%. The share of income going to the bottom 80% has fallen by 7%.[47] You can see questioning of the benefits of globalisation.for yourselves in the recent Democratic primaries in the US, where candidates talked to eager audiences about ripping up NAFTA and used strong protectionist language.

Despite these problems, Summers' policy prescription is not for any retreat from globalisation – nor even any attenuation of it. Rather, his proposed strategy is one of: 'global co-operation to raise [labour] standards'.[48]

I strongly agree with Larry Summers' ultimate conclusion that: 'The public policy response of withdrawing from the global economy, or reducing the pace of integration, is ultimately untenable.'[49]

Policy-makers in Australia must maintain our support for open trade and investment borders. The global engagement of Australian businesses generates higher levels of productivity, growth and living standards – along with access to new learning opportunities, technologies, ideas and skills for our people.[50]

Government can assist the participation of Australian business in global markets for products and (even more importantly) services,[51] by:

- continuing to press for closer economic integration, both multilaterally – and with key nations/trade blocs including China, India and ASEAN;[52]
- supporting the process which I am arguing for through the APEC Business Advisory Council of a Free Trade Agreement of Asia Pacific (which by the way is more about market integration than market access);
- bringing the global business community 'inside the tent' on future negotiations over free trade agreements;[53]and
- ensuring that Australia's 'behind the border' policy settings are right – in areas such as infrastructure, taxation, education and training, and (of course) workplace relations.

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[46] Globalisation is the process of creating a world economy and system of world communications that develops and evolves quite independently of any state or other kind of control: I Adams, *Political Ideology Today*, Manchester University Press, 2001.

[47] D Leanhardt: New York Times, 10 June 2007, 'Larry Summer's Evolution'.

[48] Ibid. See further, for example, Greg Bamber, 'How is the Asia-Pacific Economic Cooperation (APEC) Forum Developing? Comparative Comments on APEC and Employment Relations' (2005) 26:4 *Comparative Labor Law and Policy Journal* 423; Bob Hepple, 'The WTO as a Mechanism for Labour Regulation' in Bercusson and Estlund (2007), above, page 161.

[49] Summers, 'A strategy to promote healthy globalisation', above.

[50] See further John W H Denton, 'Trade and Trade Facilitation', *Speech to the Africa Business Forum*, London, 3 July 2008, available at: http://www.corrs.com.au/corrs/website/web.nsf/Content/DentonJohn.

[51] On the growing importance to the Australian economy of trade in the services sector, see Glen Boreham, 'A commodity just too valuable to miss the export boat', *The Age*, 3 August 2007.

[52] See further Business Council of Australia, Trade and International Relations Task Force, *Trade Principles*, August 2005, available at: http://www.bca.com.au/Content/100837.aspx; John W H Denton, 'Region holds key to our prosperity', *The Australian Financial Review*, 17 June 2008; The Hon Simon Crean MP, Minister for Trade, 'Trade – Opening Doors in Asia', Speech to the Asialink Leaders' Program, 24 June 2008.

[53] See John W H Denton, 'It's time to rethink trade talks', *The Australian Financial Review*, 11 August 2008.

As well as acknowledging the international policy context in which changes to Australia's workplace relations laws are occurring, it is useful to examine how policy-makers elsewhere are addressing these challenges.

As I said earlier, when you take a look around the world, you see many other nations implementing workplace reforms aimed at delivering competitiveness, fairness and flexibility.

In doing so, it seems they have taken on board the views of the Canadian labour law expert, Professor Harry Arthurs, who wrote last year that:

> A new body of research suggests a positive correlation between high labour standards, labor market flexibility, productivity, and economic growth. If that research survives analysis and critique, employers and governments may well come to appreciate that legislated labor standards are not the enemy of a dynamic economy.[54]

I will now examine how governments in several overseas countries, and one supra-national body – the EU – have sought to balance these objectives.

China's Labour Contract Law

I begin with China, because its importance to Australia cannot be overstated. As I have observed elsewhere, China is the key emerging power in the East Asian region – and Australian engagement with China is critical to our own economic success.[55] Two-way investment between China and Australia is growing, and our trade relations are even stronger.[56]

It is interesting to start here because perhaps counter-intuitively China, in deciding to attract higher quality investments, has actually decided to go 'up stream' on labour regulation!

In June 2007, China adopted a new 'Labour Contract Law' which has significantly increased the legal protections offered to employees – but which also seeks to address the concerns of business, including the many multinational companies with operations in China.[57]

This new legislation was considered necessary, as previous labour regulation in China[58] was based on a largely State-owned/controlled economy – which has been transformed into a liberalised, globally-connected, free-market economy.

The Labour Contract Law commenced operation on 1 January 2008. Its key elements are as follows:

- The new law comprehensively regulates employment contracts, from their formation to termination. It requires written contracts to be entered into for most types of employment, with pay and conditions benchmarked against (for example) relevant collective contracts.

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[54] Harry Arthurs, 'Reconciling Differences Differently: Reflections on Labor Law and Worker Voice after Collective Bargaining' (2007) 28:2 *Comparative Labor Law and Policy Journal* 155, at page 164 (references omitted).

[55] John W H Denton, 'We can make a difference in East Asia', *The Australian Financial Review*, 9 April 2008, page 71.

[56] The Hon Simon Crean MP, Minister for Trade, 'Australia-China: Opportunities and Challenges', *Speech to the Australian Chamber of Commerce*, Shanghai, 18 April 2008. The Minister notes that as at the end of 2006, Australian companies had invested $3 billion in China while Chinese investment in Australia had reached $3.4 billion; and that the Australian Government is now pursuing an Australia-China Free Trade Agreement.

[57] Sean Cooney, Sarah Biddulph, Li Kungang and Ying Zhu, 'China's New Labour Contract Law: Responding to the Growing Complexity of Labour Relations in the PRC' (2007) 30:3 *UNSW Law Journal* 786. The following discussion of China's Labour Contract Law draws primarily on this source.

[58] Mainly, the 'Labour Law' of 1994.

- It recognises the rights of employers to engage workers on fixed-term contracts, for specific projects, or on a casual basis – although with certain procedural and substantive restrictions (eg casuals cannot be employed, on average, for more than four hours per day or more than 24 hours per week).
- Further restrictions are placed on the use of labour hire (or 'dispatch') workers – including engagement (by the labour hire company as employer) on a fixed-term contract, for a minimum term of two years.
- The law contains several measures to address underpayment of wages, and prohibits forced overtime and 'bonded labour' (all of which are known to have occurred, historically, on a widespread basis in China).
- There has been a strengthening of protections against unjust termination of employment, although through: 'a bifurcated regulatory framework, with workers engaged on a regular basis enjoying extensive protections of their tenure, while non-standard workers have little security.'[59] Generous severance payments (around one month's pay per year of service) apply to the dismissals of most continuing or fixed-term employees.

While these aspects of China's Labour Contract Law may suggest a predominant focus on fairness for employees, it must be acknowledged that this regulation starts from a 'low base'.

That is, previously applicable laws (on their face) provided employees with reasonably high levels of protection – but they were significantly hampered by weak enforcement mechanisms.[60] The new law aims to plug some of the gaps in the former regulatory scheme, and ensure better compliance.[61]

However, the concerns of employers (including those expressed through international business lobby groups) are addressed to some extent in at least two aspects of the Labour Contract Law:

- The law requires consultation with employees, or their representatives, where an employer proposes to vary work rules or working conditions. However, a proposal in the draft law to make such changes subject to the consent of the employees (effectively giving them a right of veto) was removed from the final version.
- The law also allows employers considerable latitude in the use of 'restraint' or 'non-compete' clauses in employment contracts. These may now be applicable to almost all employees (rather than just those who have access to the employer's commercial information, as proposed in the draft law); and can operate without geographic restriction, although they are subject to a two-year time limit (after the employment ends).

Another important objective achieved by China's Labour Contract Law has been to clarify the legal rules applicable to many aspects of the employment relationship – previously subject

[59] Cooney, Biddulph, Kungang and Zhu (2007), above, page 794.
[60] See further Sean Cooney, 'China's Labour Law, Compliance and Flaws in Implementing Institutions' (2007) 49:5 *Journal of Industrial Relations* 673.
[61] The latter goal may be further advanced by the adoption of the proposed new 'Labour Dispute Mediation and Arbitration Law' (currently in draft form): see Cooney (2007), above; and Haina Lu, 'New Developments in China's Labor Dispute Resolution System: Better Protection for Workers' Rights?' (2008) 29:3 *Comparative Labor Law and Policy Journal* 247.

not only to national legislation, but also provincial and local regulatory and administrative bodies, and court decisions.

Certainty in the content and enforcement of China's labour regulation are important factors affecting its desirability as a location for foreign investment.

The UK: 'regulating for competitiveness'

Under the Blair, and now Brown, 'New Labour' governments in the UK, employment regulation has formed an important part of a broader (essentially neo-liberal) economic and political project known as the 'Third Way'.[62]

Very early in his first term as Prime Minister, Tony Blair signalled that there would be no winding back of the Thatcherite anti-union/anti-strike laws.[63] While Blair pledged that 'Britain [would] have the most lightly regulated labour market of any leading economy in the world',[64] significant new rights for employees have been enacted by New Labour over the last 12 years including:[65]

- a statutory minimum wage;
- greater protections for part-time and fixed-term workers;
- a right to request family-friendly working hours;
- stronger anti-discrimination laws; and
- enhanced collective labour rights through the statutory union recognition procedure, information and consultation requirements in relation to business restructuring, and European Works Councils.

Further extensions of employment law rights are currently being developed for the next session of Parliament, including 'equal treatment' for temporary agency workers, and measures to improve work-life balance for working parents.[66]

However, as Professor Hugh Collins has observed, labour regulation in the Blair/Brown years has been motivated not so much by the traditional protective goals of labour law – but by an overriding concern 'to improve the competitiveness of businesses'.[67] Employment rights have been justified on the grounds of efficiency (ie they are 'good for business'), rather than fairness.[68] And great care has been taken to avoid regulation that would 'impose labour-market rigidities or disproportionate costs on employers'.[69]

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[62] See for example Giddens (2001), above; Sandra Fredman, 'The Ideology of New Labour Law' in Catherine Barnard, Simon Deakin and Gillian Morris (eds), *The Future of Labour Law*, Hart Publishing, 2004, 9.
[63] 'Foreword by the Prime Minister' in Department of Trade and Industry, *Fairness at Work*, Cm. 3968 (1998).
[64] Ibid. In 2005, a House of Commons Committee found that the UK indeed had 'a more lightly regulated labour market than most comparable economies': see Paul Smith and Gary Morton, 'Nine Years of New Labour: Neoliberalism and Workers' Rights' (2006) 44:3 *British Journal of Industrial Relations* 401, at page 414.
[65] See further Fredman (2004), above; Smith and Morton (2006), above.
[66] European Foundation for the Improvement of Living and Working Conditions (Eurofound), 'Draft legislative programme heralds extension of workers' rights', *EIROnline*, 3 July 2008, available at: http://www.eurofound.europa.eu/eiro.
[67] Hugh Collins, 'Is There a Third Way in Labour Law?' in Joanne Conaghan, Richard Fischl and Karl Klare (eds), *Labour Law in an Era of Globalization: Transformative Practices and Possibilities*, Oxford University Press, 2002, 449 at page 445; see also Hugh Collins, 'Regulating the Employment Relation for Competitiveness' (2001) 30 *Industrial Law Journal* 17.
[68] Fredman (2004), above, pages 20-21.
[69] Smith and Morton (2006), above, page 404.

'Regulating for competitiveness' in the UK has been accompanied by a strong policy push in favour of 'partnership' relationships between management and unions. With support from the Trades Union Congress, New Labour has encouraged firms to shift away from adversarial collective bargaining by entering into partnership agreements with unions. [70]

Benefits for companies that have pursued government-funded partnership projects included improvements in production through the implementation of change (eg outsourcing); greater success in staff recruitment and retention; and lower rates of absenteeism.[71] Recently, however, interest in the concept of partnership in both government and union circles has dwindled which indicates some new thinking is required.[72]

A final feature of New Labour's low-intervention, relatively business-friendly approach to labour regulation has been its stance towards the EU. The trend here has generally been one of UK resistance to EU-level regulatory initiatives, and failing that, minimalist domestic implementation of EU directives. This approach reflects ongoing scepticism about the European social model, which the UK Government views as incompatible with the flexibility needed to meet the challenges of globalisation.[73]

'Flexicurity' in the EU

I have also been critical of the inefficiencies and costs to stakeholders of the type of regulation imposed by the EU's many work directives.[74]

However, since 1997, the European Commission has promoted 'the importance of both flexibility and security for competitiveness and the modernisation of work organisation'. 'Flexicurity', as it has come to be described, is: 'a means whereby employees and companies can better adapt to insecurities associated with global markets'.[75]

Some of the strategies that form part of the flexicurity approach are as follows:[76]

- A focus on employment security, rather than job security – recognising that few workers stay in the same job for life.
- Enabling companies, especially small-to-medium enterprises, to adapt their workforce to changing economic conditions.
- Flexible/reliable contractual arrangements.
- Career progression through life-long learning programs, in-company training, and entrepreneurship (internal flexicurity).

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[70] Collins (2002), above; John Kelly, 'Social Partnership Agreements in Britain' in Mark Stuart and Miguel Martinez Lucio (eds), *Partnership and Modernisation in Employment Relations*, Routledge, 2005, p 188.
[71] M Terry and J Smith, *Evaluation of the Partnership at Work Fund*, Department of Trade and Industry, Employment Relations Research Series No 17, 2003.
[72] See for example John McIlroy, 'Ten Years of New Labour: Workplace Learning, Social Partnership and Union Revitalization in Britain' (2008) 46 *British Journal of Industrial Relations* 456.
[73] Smith and Morton (2006), above, page 405.
[74] See Denton, 'The 21st Century Leadership Challenge', above.
[75] Eurofound, 'Flexicurity', in *European Industrial Relations Dictionary*, available at: http://www.eurofound.europa.eu/areas/industrialrelations/dictionary. See further Per Kongshoj Madsen, 'Flexicurity – Towards a Set of Common Principles?' (2007) 23:4 *International Journal of Comparative Labour Law and Industrial Relations* 525, including discussion of how the concept of flexicurity has been implemented by some EU member states.
[76] European Commission, Employment, Social Affairs and Equal Opportunities DG, 'Commission promotes 'flexicurity' approach', *Social Agenda*, Issue No 15, September 2007, page 12.

- More dynamic labour markets, enabling workers to move easily between jobs (external flexicurity).
- Promoting gender equality and equal opportunities.
- Modern social protection systems (ie adequate income support for the unemployed).

In June last year, the European Commission released its guidelines on flexicurity – which are intended to form the basis of flexicurity policies implemented by EU member states.[77]

A further set of 'Common Principles of Flexicurity' was formally adopted by the European Parliament in November 2007. The implementation of these principles by member states will be monitored by the 'Mission for Flexicurity' established in February 2008, which is due to report this December.[78]

While it generally has strong support among the European social partners,[79] flexicurity has not been without controversy.

For example, the European Trade Union Confederation has expressed concerns that the concept might make it easier for employers to 'hire and fire' workers, and lead to greater use of precarious forms of employment.[80]

On the other hand, employer bodies such as Business Europe see flexicurity as critical to the modernisation of European labour markets, enabling structural weaknesses to be corrected.[81]

It seems that the general public in Europe accepts some of the key underlying objectives of flexicurity: 72% of EU citizens responding to a recent survey indicated that employment contracts should be more flexible to create more jobs, 76% said a job for life was a thing of the past, while 88% saw the connection between life-long learning and the ability to find employment.[82]

Adaptability to change through flexicurity is now an entrenched feature of EU social policy.[83]

USA: the Employee Free Choice Act

Early last year, a bill was introduced into the United States Congress that would significantly alter the current arrangements for union-based collective bargaining under the *National*

[77] See European Commission (2007), above; Eurofound, 'Commission lays down guidelines on flexicurity', *EIROnline*, 20 August 2007.
[78] Eurofound, 'Flexicurity', above.
[79] Eurofound, 'Social partners make breakthrough on flexicurity guidelines', *EIROnline*, 3 December 2007; see further ETUC, Business Europe, UEAPME and CEEP, *Key Challenges Facing European Labour Markets: A Joint Analysis of European Social Partners*, October 2007.
[80] Eurofound, 'Social partners make breakthrough on flexicurity guidelines', above.
[81] Eurofound, 'Commission lays down guidelines on flexicurity', above.
[82] European Commission (2007), above.
[83] As to how flexicurity fits within the European Commission's broader social policy framework, see Commission of the European Communities, *Green Paper: Modernising labour law to meet the challenges of the 21st century*, COM(2006) 708 final, Brussels, 22 November 2006; Rien Huskamp and Kees Vos, 'Flexibilization, Modernization and the Lisbon Strategy' (2007) 23:4 *International Journal of Comparative Labour Law and Industrial Relations* 587.

Labor Relations Act (NLRA). The 'Employee Free Choice Act' (EFCA) proposes three main changes to the NLRA:[84]

- First, allowing the National Labor Relations Board (NLRB) to certify a union as the bargaining representative for a group of employees, if a majority of those employees have signed authorisations of the union's role. In effect, this would enable unions to obtain bargaining rights through a 'card check' system – whereas under the NLRA presently, they can only establish such rights through a secret ballot process which is often vigorously opposed by employers.[85]
- Second, providing for mediation and, if necessary, arbitration of a 'first contract' (ie collective agreement) by the Federal Mediation and Conciliation Service, where an employer and a union are unable to reach agreement in bargaining.[86]
- Third, introducing stronger penalties for employers that unlawfully violate the rights of employees seeking to obtain union representation or a first contract under the NLRA.[87]

According to its proponents, the EFCA is a necessary response to the long-standing shortcomings of the NLRA as a basis for establishing the collective bargaining rights of employees.[88] Not surprisingly, employer lobbyists and some think-tanks are mobilising against the bill.[89]

And although the EFCA has the support of many congressional Democrats (including presidential candidate, Barack Obama), and a few Republicans, the bill is unlikely to be passed in this term of Congress.[90] However, it is interesting to observe that even in the home of 'muscular free enterprise', the Congress is prepared to call on a debate right now that in some ways reflects our own in Australia – about how to get the balance right between competitiveness, fairness and flexibility in labour regulation.

If you recall my earlier discussion of Larry Summer's concerns, it is really unsurprising.

Further implications for Australia

A key concern for the countries I have examined, and the EU, is to ensure that workplace regulation fits with broader economic goals – enabling them to compete in globalised product and service markets, and ensuring they are able to attract international investment.

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[84] AFL-CIO, 'Employee Free Choice Act – Summary', available at: http://www.aflcio.org/joinaunion/voiceatwork/efca/. For further detail see James Pope, Peter Kellman and Ed Bruno, 'The Employee Free Choice Act and a Strategy for Winning Workers' Rights' (2008) 11 *Working USA: The Journal of Labor and Society* 125.

[85] See for example John Logan, 'The Union Avoidance Industry in the United States' (2006) 44 *British Journal of Industrial Relations* 651.

[86] Mediation would be available if the parties are unable to reach agreement within 90 days; arbitration could occur if they are still unable to reach agreement after 30 days of mediation. The resulting arbitrated outcome would be binding on the parties for two years: see AFL-CIO, above.

[87] The new penalties would include civil fines of up to US$20,000; and the NLRB would be required to seek federal court injunctions against certain types of employer conduct: see AFL-CIO, above.

[88] See for example Jefferson Cowie, 'For the Long Run: The Employee Free Choice Act', *Common Dreams News Center*, 27 April 2006, available at: http://www.commondreams.org.

[89] See for example Paul Kersey and James Sherk, 'How the Employee Free Choice Act Takes Away Workers' Rights', The Heritage Foundation, Backgrounder #2027, 23 April 2007, available at: http://www.heritage.org/research/Labor/bg2027.cfm.

[90] Wikipedia, 'Employee Free Choice Act', available at: http://en.wikipedia.org/wiki/Employee_Free_Choice_Act.

Australia faces the same challenges. But the experience of these other nations suggests that new approaches offer better prospects for resolving the tensions between competitiveness, flexibility and fairness, than traditional labour law frameworks:[91]

- The UK is perhaps the best exemplar of the kind of approach that Australia should adopt, ie:
    - focusing labour regulation on a strong 'floor' of individual employment rights;
    - providing collective negotiation and bargaining processes for those that still want to use them (but not making them the primary focus of the regulatory system);
    - promoting cooperative workplace relationships (rather than traditional adversarial posturing); and
    - subjecting all regulation to the overarching goal of competitiveness.
- We can also learn a lot from the EU's efforts to 'fuse' the goals of flexibility and fairness through the concept of flexicurity – and the harnessing of this concept to the project of enhancing the economic competitiveness of EU member states.
- And, returning to the other main theme of this speech, China has shown that labour laws must keep pace with structural changes in the economy. Just as China's new Labour Contract Law reflects the profound shift from a centrally-controlled to an open, market economy – so must Australia move away from an IR system grounded in its design in an economy and business approach that simply is no longer relevant for the majority of participants, to one that meets the needs of a fast-moving, globally-integrated economy.

Conclusion

In this lecture, I have sought to outline two broad arguments that I think are critical – but largely neglected – in the current workplace reform debate in Australia:

- First, that the historical development of our system of industrial regulation limits our thinking about what is possible for the future – and we have to remove those historical 'blinkers' if we're to move up the international 'league tables' of competitiveness.
- Second, that the recent experience of a number of other countries shows that the competing goals of national competitiveness, fairness for employees, and flexibility for businesses, can be reconciled. And while this has involved a degree of re-regulation of the labour market, this has only occurred to the extent necessary to temper the sometimes harsh impacts of globalisation – but without abandoning the overall project of internationalist economic policy.

The big challenges for policy-makers (and I include you all in this group) in our field, include the following:

[91] See further Katherine Stone, 'In the Shadow of Gloabalization: Changing Firm-Level Employment Practices and Shifting Employment Risks in the United States' in Beverley Crawford and Michelle Bertho (eds), *Globalization Comes Home: How the United States is Being Transformed by Globalization*, Praeger, 2007.

- To continue to modernise our system of workplace regulation, balancing fairness with the flexibility that our firms need to compete globally – and that our increasingly savvy, knowledge-rich workforce demands.
- To develop an agenda for workplace reform that goes beyond statutory regulation – exploring other policy levers that could help drive productivity in Australian businesses.
- To stay the course in the global economic order, through a continued commitment to open trade and investment policies – this means resisting the clamouring of certain interest groups for a return to the cosseted comfort of protectionism.
- To examine how other countries have gone about addressing these issues, learning from their successes and failures – and most importantly, coming up with solutions that will work for Australia.

Australians are capable of this and are up to the challenge. We are recognised internationally for this.

In saying this, I would like to finish with the thoughts of the celebrated Polish journalist, the late Ryszard Kapuscinski, who travelled and wrote extensively about life and politics in many countries including Ethiopia, Iran, and the former Soviet Union.

Kapuscinski also travelled to Australia on several occasions. His reflections, as relayed by the Australian journalist Phillip Knightley, are telling.

Knightley recounts Kapuscinski's experience of writing his famous book, *Imperium*,[92] about the fall of communism in Eastern Europe:

> "While he was writing the book he kept coming across people who would say, 'It's great that communism has gone but, my God, this capitalism's tough. Isn't there anywhere in the world where market forces rule, but they look after the young and the old, the sick and the poor, and the workers get a fair go?'
>
> Kapuscinski … would always reply, 'Yes there is – Australia'."[93]

Our challenge is to live up to this view by being prepared to continue to mount the argument for more change to achieve the troika of national competitiveness, fairness and increased productivity.

Thank you again for inviting me to give this lecture, and thank you all for listening.

[92] Ryszard Kapuscinski, *Imperium*, Granta Books, 1994.
[93] This quote obtained from Richard Yallop, 'Turning Point?', *The Weekend Australian*, 25 April 1998, page 21.