

Address to AUSVEG Hort Business Summit – National Agriculture Day

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It's great to be invited to talk with you today, National Agriculture Day, and reflect on the important contribution this sector makes to the economy and our national wellbeing.

You are meeting at a time that Winston Churchill may have called “a hinge moment” where a range of issues of particular concern to Australian business could swing in any of several directions. Today, others might like to call it an inflection point.

This includes our general immediate economic circumstances – inflation, unemployment and interest rates especially; longer term concerns around flatlining productivity stuck by some measures around levels from a decade ago; the challenge and embrace of technology including of course artificial intelligence; workforce challenges around shortage, skills and demography; the need to foster innovation across industry; our ever present and growing energy challenges; the ever growing regulatory burden being imposed on industry by government, state and federal, as well as on business supply chains to meet regulator requirements; and the straitjackets being imposed on our workplaces impacting their ability to shift and adjust according to economic conditions, competitive circumstances or immediate business need.

I haven't even mentioned our rapidly evolving geo-political challenges ranging from conflict in the Middle East and Russia/Ukraine, potential conflict over Taiwan and in the South China Sea, a clearly weakened Chinese economy and the election of the Trump administration, which, whether you are a supporter or opponent, you know is going to be majorly disruptive, if not transformative, both in the United States economy and to global trade flows.

Finally, we face a highly competitive Australian election within six months where any of four outcomes are distinctly possible. That alone makes Australian business naturally more hesitant to invest until there is clarity on the outcome and direction.

At the Australian Industry Group we collect these broad business challenges into six buckets – six Ds. Decarbonisation, digitalisation, diversification, disruption, debt, demography. Those are the headline issues you are all facing into today.

A key to meeting all those challenges is of course to lift our national productivity – doing more with what we have and working smarter to increase our output. And a key to our success or failure is the state of our workplace relations architecture.

We have seen massive change imposed on Australia's workplaces over the past two years. Do not understate its impacts, which in some cases are only now starting to ripple their way

through thinking about how our workplaces function. Given how our system operates with both awards and enterprise agreements at play, systemic change takes time to stealthily impact employment.

The bottom line is that nothing that has been imposed on business over the past two years does anything to boost productivity, create employment, drive innovation or encourage investment. Not a thing. Instead, rigidities and constraints are increasingly emerging – as we have consistently warned – to the productive employment of Australians young and old.

It is a prime reason why you are now seeing the private sector starting to shed jobs at an alarming rate. The headline labour market is surprisingly resilient, with unemployment steady at 4.1 per cent, but that resilience is being driven by government stimulus and rapid public sector job growth across administration, healthcare, education and social industries. Put simply, the growing employment weakness of our private sector is being masked by a reliance on public sector growth.

This workplace relations change has come about through a series of tranches first flagged at the now infamous Jobs and Skills Summit in early September 2022. This followed a series of often vague commitments the government took to the 2022 election, which fundamentally reflected a long-held union wish list to re-regulate the labour market, reduce flexibilities and increase their presence in workplaces. Increasing union membership was the name of the game.

Some of what has transpired since was not even raised before the last election. And we see unions already agitating for more if the government is re-elected. Portable long service leave entitlements, reproductive leave, rolling back junior pay rates and greater restrictions on fixed-term contracts are among a swag of demands being pushed by various unions.

The government has committed to no more change this term but as always we await election commitments next year. Union pressure for even more rolling back of employer rights to develop, design and manage their workplaces to meet their individual needs and circumstances will be immense.

The coalition has committed to revisit the recently implanted changes, which immensely complicate the definition of a casual worker and which have already seen major negative impacts on employment in the less than three months since their introduction.

A review of the right to disconnect laws – still undefined, untested and causing significant confusion and discord – are also set to be examined. Beyond that, there is no certainty around what approach the coalition will take. A legislative review is an option. Again we await details.

The government has itself begun a review of the first tranche of its legislation, known as *Secure Jobs, Better Pay*, which passed parliament in December 2022. It agreed to undertake the review in return for Senate cross bench support. That review is now being undertaken at the government's request by two academics with a particularly short review time, which we managed to get extended.

We have met the reviewers who are also examining changes to arrangements relating to enterprise agreement making, the expansion of multi-employer bargaining and the termination of 'zombie agreements' which has been troublesome for many employers among other things. A draft report will be issued for consultation in January with the final report in March. We all, of course, await that review with interest.

That first tranche was just the start of successive pages of legislative changes developed amid frankly brutal negotiations with the government. The outcomes, although not what employers wanted, were overall undoubtedly better for those consultations which we have put enormous effort into on behalf of industry. It could have been worse as they say.

I don't want to cycle through all the changes the government has rammed down the throat of business but I will focus on the latest swathe of measures – the so-called *Closing Loopholes* legislation. The titles of these Bills must have been workshopped hard within the union movement with a quiet nod to George Orwell's 1984.

In particular, the *Same Job, Same Pay* legislation, which is designed to strangle labour hire in Australia – the means by which employers can flex their workplaces to meet seasonal demand among other things.

Undoubtedly this was aimed squarely at the aviation and mining sectors – aviation because of a history of disputation between Qantas and the TWU; mining because unions pretty much have not set foot in the Pilbara since the chaos they created in the 1980s.

Simply put, a person's experience, background, knowledge, skills and productivity count for naught. A 22-year-old with no experience is expected to be paid the same as a more productive, experienced 50-year-old undertaking broadly the same tasks. The outcome is that no sensible employer is going to look to hire the less experienced, less knowingly productive prospect. Cast your mind forward 30 years to imagine the longer-term impact on Australia's workforce.

These laws have consequences now and into the future. While the direct impact of the changes have been felt by a handful of sectors and employers, this will grow over time as a broader range of unions make use of this new jurisdiction. Of course, the indirect impact is just as significant. Employers across the economy are reassessing the viability of using labour hire and, at the very least, budgeting for an expectation of facing higher labour costs in the future.

The first major test case involving BHP and labour hire companies is under way and Ai Group has intervened because of the consequences not just for BHP but for industry as a whole. Your sector is certainly not immune.

Of course, this is just one controversial element of a raft of radical changes introduced through the *Closing Loopholes* legislation, many of which came into effect at the end of August. We have seen major changes to the definition of an employee, a new definition of a casual employee, the new right to disconnect provisions, new rights for union delegates, new laws criminalising wage underpayments, new powers for the Fair Work Commission to set terms and conditions for gig workers and contractors in the road transport sector (

raising the spectre of the dreaded and thankfully abolished Road Safety Remuneration Tribunal) and new arrangements for a swathe of independent contractors.

These are not inconsequential. A lot of this is still to be worked through and tested. The Fair Work Commission and undoubtedly the courts have a mountain of work ahead to sift through all of this to determine and settle new rules of engagement.

Just think of this. The already 1200-page *Fair Work Act* – as long as War and Peace – has had over 700 pages added to it. What was essentially a simple definition of a casual employee accepted by the High Court – if you were engaged as a casual you were paid as a casual – has been turned into a 17-page test of stamina for employers and employees to wade through. What could go wrong?

The *Fair Work Act* is now making the Australian Tax Act look like an example of simplicity and precision.

One of the most baffling components of all of this was the so-called, alluringly titled Right to Disconnect, copied from France – well known as a simple place to employ people and adjust workplaces as necessary. This was brought to us by the Greens as a condition for passing the rest of the legislation. It was simply dumped into the Bill with minimal consultation at the last moment.

Frankly, nobody is sure how it will actually work in practice. The old “reasonableness” test is meant to apply but of course, given the chance, some employees will take their definition of reasonable to an extreme. Again, the only winners from this will be employment lawyers as workplaces find themselves consumed in acrimony and lawfare.

Apart from that, there are a raft of major cases before the Fair Work Commission and courts employers should be aware of:

Another Award Review which was run during the first half of the year considered whether awards should be amended to improve job security, help employees balance work and caring responsibilities and make them simpler and easier to use.

We advanced over 40 proposals for changes to make awards simpler. Unions advanced a highly ambitious shopping list of proposals. Ultimately the FWC didn't implement many proposals but is convening two sets of proceedings to deal with major issues arising from the review:

- 1) Considering development of a Work From Home clause for the Clerks Award directed at removing barriers in the award to working from home. This might serve as the template to be subsequently dropped into other Awards. Unions are expected to seek a blanket right to work from home.

- 2) Reviewing the part-time employment provision in Awards. We will argue for them to be made more flexible so that part-time employment is a viable alternative to casual employment.

The Fair Work Commission has set a new model term for awards dealing with new rights for union delegates. It is however the subject of a challenge by two unions which will be heard by the Federal Court next year. We will appear in the matter.

The Commission has set a new Right to Disconnect term in all awards but, as I said, how it actually works in practice is a long way from being settled.

On multi-employee bargaining, which was always going to be a slow burn, we are seeing unions across the economy threatening to use it against employers. Cases to watch on this include an appeal to the Federal Court over a claim on three large coal mines; a claim against 14 disability-sector providers in regional Victoria which is being strongly opposed; and a claim by the SDA against a group of McDonalds franchisees in South Australia.

Remember, we were assured, hand on heart by the government and the ACTU, that multi-party bargaining would largely play out in the care economy. We are already a long way from that. We did warn at the time this would end in tears and if successful would lead to industrial action and higher wages being imposed on employers. We will see who is right as this plays out over time.

A great deal of what I have talked about today applies to or impacts the horticulture sector. I know you have specific concerns on issues around overtime payments and the classification of workers under the award as they move between sectors in the industry. Apples aren't the same as oranges after all. Nor are tomatoes and potatoes.

The challenges for you are exacerbated by immigration changes that limit the amount of overseas workers, or place rigid controls that have no sensitivity to the fact that you need a different skill set at various times of the year. You need different types of labour depending on the task at hand, and you need it when the season determines it and over which you have no control. We are working with the Department of Immigration and the Minister, Andrew Giles, as we try to support these diverse needs.

Your sector like much of the economy is under pressure as cost-of-living pressures impact consumer buying habits and the price you can get for your product.

The broader pressures as well as the specific issues raised around workplace relations are making employing, investing and competing that much harder. Business closures are at record levels for a reason. It is simply getting harder, more challenging and more complex to run and manage a business in Australia.

The next 12 months will continue to be challenging. Only the Reserve Bank knows what will happen on interest rates, but with continued relatively low unemployment – held up by government spending and public sector job creation – and sticky and increasingly home-grown inflation, the chances of imminent rate relief look fairly slim.

Despite that, the resilience of the economy, business and your sector is remarkable. Australia has long been admired for its strong institutions, a robust and some would say a miracle economy and an adaptive workforce. The period ahead will undoubtedly test that resilience.