



Ron McCallum Debate

Labour Relations and Pandemics: Past, Present, Future

TRANSCRIPT

22 October 2020¹

James Fleming: Good evening and welcome to the 10th Annual Ron McCallum debate on industrial relations. I'm James Fleming. I'm the Executive Director of the Australian Institute of Employment Rights and it's my great pleasure to introduce the debate and tell you about tonight's program.

I'd like to begin by acknowledging the traditional custodians of the land on which we meet today and to pay my respects to their elders past and present. The aim of the Australian Institute of Employment Rights is to promote international and fundamental labour standards, as well as tripartism and dialogue in the public interest, so we're very pleased to host this public debate tonight and on such a timely issue.

Our topic tonight, as you know, is labour relations and pandemics, past present future. The debate is being hosted from a studio in Sydney with people patching in from around Australia and around the world and I'm pleased to say we've got quite a program for you. So, firstly we're going to play a short film that we made for the debate based on my interview with Greg Vines. Greg is deputy director general of the International Labour Organization and he's going to give a bit of a global and ILO perspective on our topic.

After the film, we'll cross to Greg live from Geneva. Greg's on the line now and standing by. Hello Greg and welcome to the debate.

Greg Vines: Hi James, how are you and it's great to be here thanks.

James Fleming: Great, so then you're going to hear from our patron, Emeritus Professor Ron McCallum. Ron is one of Australia's most respected labour law experts and this debate is held every year in his honour Ron is a much-loved teacher an inspiration to many and as you'll hear later tonight. He's a really engaging speaker. Ron is also the first totally blind person to have been appointed to a full professorship in any field at any university in Australia or New Zealand. His achievements are just too numerous to list here in full. He's held several professorships and was appointed Emeritus Professor at Sydney law school in 2011. He's been invited to teach in Canada in the united states he's a past chair of the united nations committee on the rights of persons with disabilities in 2006 he was made an officer of the order of Australia and in 2011 he was named senior Australian of the year Ron will be giving a short historical perspective on our topic before the main debate and as usual he's going to give his reflections at the end after we have some questions from the audience.

¹ The 10th Annual Ron McCallum Debate was recorded live on 22 October 2020. This transcript is based on the captions generated from the recording and may contain errors. Please check the live recording before quoting. The recording and timecoded captions may be accessed [here](#).



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Ron is in the studio in Sydney welcome Ron and hello.

Prof. McCallum: Hello James and hello everyone – it's great to be here I think this is the best debate ever and I'm truly honoured. Fantastic.

James Fleming: Next, I'd like to introduce Justice Iain Ross, the President of the Fair Work Commission. He'll be moderating the main debate and I'll leave it to him to introduce our esteemed debate panellists later on this evening. On our panel, we've got leaders from Australia's main business organisations and the trade union movement as well as academic experts. Good evening Justice Ross. How are you?

Justice Ross: Good evening James. Thanks very much. I'm looking forward to it.

James Fleming: Thanks. So, we've got over 700 people registered in our audience tonight which is fantastic and looking at that list it's a really good cross-section of our industrial relations community. Greetings to all of you from the judiciary, past and present members of the Fair Work Commission, the legal profession and Academia. I can see many from government, unions and business. Welcome also to the media, students and members of the public joining us here tonight.

Now, if you don't have it already, you'll see in the resources section next to the live feed that you can download the background briefing paper for further information about our speakers and also the issues of the debate and you can follow along. There's also a chat function right there under the live feed window so you can pose questions during the debate and we'll deal with some of these towards the end.

Now a quick word about the format of our main debate tonight. So, we're following a new format this year. In the main debate, each of our eight panellists will first be given three minutes to talk to the topic: '*Covid 19 has shaken up the whole world. Where to next for IR in Australia*'. After their speeches, Justice Ross will moderate the debate on the following topic: '*What is the impact of the Covid 19 pandemic on work, employment and labour relations, both globally and locally and what impetus and opportunity does it present for reform?*'

Now, we had invited both the Minister for Industrial Relations, Christian Porter, and his counterpart, the Shadow Minister Tony Burke, to be part of that panel but unfortunately the minister sends his apologies and was unable to attend due to other commitments. Hence, to preserve the balance of the debate we asked the shadow minister to withdraw which he's graciously done. You can hear from the Shadow Minister, however, and other commentators on this topic and many other industrial relations topics in our new podcast series that we're launching later in the year and we'll keep you posted on that.

I'd like to thank our sponsors, Harmers Workplace Lawyers, for their generous support in making this debate possible and without further ado we'll now play the short film and then hand over to Greg Vines. Thank you.

Start of short film



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Greg Vines: My name's Greg Vines. I'm the Deputy Director General of the International Labour Organisation. As you can probably tell from my voice, I'm Australian, and it's great to be able to participate in this – in this Australian event. The ILO based here in Geneva is playing a central role around all of the aspects of Covid–19. We've got about 3 000 staff, we've got 60 offices around the world, and all of us are just flat out.

At the moment, in the world, almost 400 seafarers are currently stuck on ships. Many of them have been on those ships for up to 18 months because they can't get off because of port closures, because of quarantine arrangements. 94 percent of workers worldwide are in countries that have some form of workplace closures. The working hours that were lost in the second quarter of this year are the equivalent of almost 500 million full-time jobs. Extraordinary figures. Global incomes have been estimated to have declined by around 10.7 percent. That's the equivalent of 3.5 trillion U.S. dollars, five and a half percent of global GDP. The worst aspect of all of this is that this is people we're talking about and the ones who are hit hardest are in most cases the most vulnerable people. We're seeing a disproportionate impact on informal workers, on women, on young people and not a lot of confidence that it's going to improve in the short term.

Unfortunately, this isn't the first time the ILO has had to deal with pandemics and crises. Indeed, I think we could look almost every year and there's a – there's an earthquake, there's a tsunami, there's a refugee issue, there's economic crises. I think the ambition of the Decent Work Agenda needs to be scaled up, not scaled back. There are some obvious gaps that we are seeing in many, many countries – gaps in provisions around social protection, such as paid leave, appropriate sick leave, and what we are seeing too often is that people who are unwell are going to work and this of course has a dramatic impact on those workplaces. We're seeing people in the informal economy who if they don't work one day, they don't eat that day. We don't want to end up with the vulnerabilities, the inequalities, the gaps that were pre-existing which have become worse during the pandemic. We can't allow the recovery to make them even worse still.

There's got to be an unprecedented level of investment in employment, in creating proper, decent jobs for people. That includes addressing the issues around the informal economy around the gig economy; providing proper protections for workers and the like, and so our number one message is the importance of social dialogue, being that mechanism where governments, workers and employers sit down and work through all of the labour market and social economic issues on a tripartite basis to try and find solutions to the pressing problems that the world faces.

The fact that the Australian Government brought together the representatives of the trade unions of the ACTU and the major employers was one of the real hallmarks of the success of the early response to the pandemic. Our encouragement to Australia would be to continue that process. The only criticism I would make is that the developing countries in the world are really, really suffering. They've not got the resources to bring in the sorts of measures that the Australian government have been able to do and so there's got to be a much, much stronger level of global solidarity in addressing this if we do want to have a bright future in the short to medium term.



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Short film ends

James Fleming: And now I'll hand over to Greg Vines at the ILO in Geneva.

Greg Vines: Many thanks James and it's really a great pleasure to be joining you today from Geneva and certainly a great honour to be introducing the annual Ron McCallum debate. We're only 10 months into the Covid-19 pandemic and already the world has lost the equivalent of 500 million jobs, income losses of 7 million – 7 trillion dollars and what we're seeing are worsening inequalities and increased poverty right around the world. Without any doubt, the pandemic has exacerbated what were pre-existing inequalities. Women have particularly been disadvantaged because of their concentration in some of the worst affected sectors and by the added burden of care responsibilities as schools and facilities have closed. Many of the two billion workers who are in informal employment, as well as workers in jobs with little protection, such as temporary workers and workers under short-term contracts, have also been particularly hard hit.

In addition, young people, whose situation was already tenuous, have suffered interruption of education and training, loss of employment, and blocked access to the world of work. Migrant workers and domestic workers have found themselves in situations of great precarity, facing the prospect of forced return to their countries of origin or the increased danger of infection as a result of their accommodation and working conditions. Inequalities also play out in what happens to people when they catch the virus. While some have access to sick leave, health services, and continue to receive a salary, for many, many others, the consequences of Covid 19 have been catastrophic. The reverberations of the crisis in the world economy are likely to be compounded by the structural transformations already underway driven by technology, geopolitics, ageing, migration, and, critically, climate change. This combination of crisis and structural pressures could create a perfect storm of challenges for employment, household income and other aspects of human security in many countries over the next decade.

The inevitable consequences of all of this is that as and when the world begins to emerge from the health emergency of Covid, it will be in circumstances of considerably higher unemployment, poverty, inequality, and social tension than when it went into the crisis. The world needs to find a new or at least stronger engine of economic recovery. The longer the pandemic lasts, the greater its disruptive force will be on the fundamental building blocks of economic and social progress and stability; that is, employment for all, skilling opportunities, decent working conditions, adequate social protection and gender equality and these are of course all the contributions that they bring to productivity growth, purchasing power and consumer and investor confidence.

An extraordinary international collective effort from governments trade unions employers and the multilateral system focusing more directly on strengthening these cornerstones of economic strength and social cohesion will be required if the world is to achieve its stated ambition of building back better and faster from the crisis. Last year, for the ILO centenary the international labour conference adopted the Centenary Declaration for a Human-Centred Approach to the Future of Work. That declaration provides a solid framework for the socio-economic recovery from the pandemic. The Centenary Declaration stresses the



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need to shape major transitions in the world of work, digital, environmental and demographic being foremost. These transitions pre-date Covid but will remain during and after it. The overriding responsibility of the ILO and its member states, flowing from the organisation's mandate for social justice – that is, to improve the situation of those who are most vulnerable and disadvantaged in the world of work – has been brought to the fore in the starkest and most cruel terms by the experience of the pandemic.

In particular, we need to address, firstly, the formalisation of informal work. The pandemic has alerted the world to the reality that two out of three workers make a living in conditions of informality and the risks and insecurity associated with that. Secondly, we need to advance a transformative agenda to achieve gender equality at work. An equitable recovery must be gender responsive. This will require investment in care-related employment infrastructure and services and addressing the risk of violence and harassment at work. Third, we need to protect and empower disadvantaged groups. Recovery from the crisis and the road to decent work will be harder for people in already disadvantaged groups or in vulnerable situations, particularly those hit hardest by the pandemic. Innovative policy making will be required to ensure their inclusion in post-Covid recovery programs and particularly in the emerging sectors in the digital and green economies.

We need to also strengthen protections across diverse forms of work. As governments have sought to provide urgent support to enterprises and workers affected by the fallout of Covid, they have often run up against obstacles linked to the different and often ambiguous status of those engaged in different work arrangements and the rights and benefits associated with them. If the pandemic does result in a more rapid extension of new work arrangements, for example, in the form of remote and gig work. The need for stronger protection and stronger international labour standards will become all the more pressing.

We also need to address the global social protection deficit. The pandemic has highlighted the human consequences of a situation in which only one in three people have comprehensive protection and more than half have no protection at all. We need to accelerate the progress of social protection, not as an ad hoc response, but through permanent rights based arrangements and importantly we also need to address safety and health at work.

The ILO estimates that 2.3 million people lose their lives every year as a result of their work through injury, accident and disease. By its very nature, as a global health emergency, Covid 19 has made public opinion acutely aware of the relationship between health and work and the risks that result from inadequate prevention and remedial measures. In confronting these challenges, we need to ensure that responses fully involve social partners – the trade unions and employers in many countries.

The immediate response to Covid drew heavily on social dialogue between governments, unions and employers, which proved its worth in the development of agreed practical social and economic measures as the pandemic persists and longer-term policy decisions need to be taken. All will need to re-dedicate their efforts to this tripartite approach. The



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fullest extent and nature of the economic and social crisis relating from the pandemic still remains unclear. There is great uncertainty about the future trajectory of the pandemic itself, the speed of the economic rebound, the degree of permanent destruction of jobs and enterprises. This makes projections about the immediate future of work more than usually difficult.

Nevertheless, what is known is that the world is experiencing a dramatic and unprecedented shock. We need actions that ensure inclusive and sustainable growth that creates productive employment and decent work for all. We need to facilitate lifelong learning paths and labour market transitions. We need to foster an enabling environment for sustainable enterprises and, importantly, we need to ensure international resource mobilisation and solidarity to support all countries, regardless of their own economic capacity to build back better. The scale of ambition of the Centenary Declaration and the scale of the challenge generated by Covid requires the ILO, together with its member states and social partners, to act with corresponding vision and ambition if we are to have a recovery that is a recovery for all. I now have great pleasure in handing the floor to Emeritus Professor Ron McCallum. Thank you very much.

Prof. McCallum: Thank you Greg. Hello again everyone. Contagious diseases are part of the human condition. Ever since we've been on this planet, we've lived with animals and viruses and we have had diseases and pandemics and when they've been going on we've had to continue our lives making and raising children, getting food, organising our own governance.

Going back in time, one of the earliest discussions of the plague is found in Homer's Iliad. I rather like Homer because it seems that he was blind and dictated the Iliad and the Odyssey. You may recall in the Iliad the Greeks under Agamemnon went to Turkey, to Troy, to rescue Helen. While they were on the beaches, Agamemnon took a young woman and made her into his servant and or concubine. Her name was Chryseis. He said, in his words, *'She will work the loom and grace my couch.'*

Her father, who was a priest of Apollo, was upset needless to say and so Zeus sent a plague on the Greeks and after nine days of the plague and quarrels amongst the Greeks the girl was released, but it led to a quarrel between Agamemnon and Achilles. What's interesting about Homer's poem in this sense is that it was thought that plagues came from God, that plagues or pestilences were supernatural, and that they came down because the gods were displeased with what we as humans were doing.

Still the most disastrous plague was the black death of 1348 which killed certainly a quarter of the population of Europe and round most of the rest of the old world and this black death gave rise to the first piece of labour relations legislation in England. It was the Statute of Labour (which is my slide 1) of 1351. The black death was 1348. And this is what the statute said, *'because a great part of the people and especially of the workmen and servants has now died in that pestilence some seeing the straits of the masters and the scarcity of servants are not willing to serve unless they receive excessive wages and others, rather than through labour to gain the living, prefer to beg in idleness.'*



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So, what did the statute say? It said everyone under 60 who is not a craftsperson is bound to work for pre-black death wages. In other words, they sought to alter the market forces. When there's a scarcity of workers, wages go up. They sought to alter market forces. In her book – and that's my next slide on books – Barbara Tuchman, perhaps one of the best amateur American historians, wrote in 1978 her wonderful book, *A Distant Mirror*, looking at the 14th Century, and she said the black death ushered in changes. People thought if God can do this, surely it does not come from God and maybe we must get out of a medieval mindset.

The Statute of labourers couldn't be enforced. There was rampant inflation and increased taxation which led to the peasants' revolt, what Tyler and John Ball in 1381 which you may look at if you read Shakespeare's Richard II.

There were other plagues of course: the plague of 1665 that Daniel Defoe writes about in *The Journal of the Plague*. That didn't stop England from flowering after the plague and the fire, the wonderful architecture of Christopher Wren and the plays of Shakespeare. Life went on but the cracks in medieval society brought about by the black death led to mercantilism and even to the reformation.

Often, labour laws are enacted because of crises. What's striking about Australia is that we put a provision in our constitution after labour dislocations in the 1890s: the industrial power, allowing the federal government to make laws with respect to conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state; that is, interstate disputes. Quite remarkable, and in 1918 and 1919 we had the influenza epidemic throughout the world. We lost 15,000 Australians during that epidemic and the states, especially Tasmania, closed their borders and people wore masks. Well, what happened? There was a dispute between engine drivers and firemen and various employers throughout Australia and they all met in Melbourne before Justice Powers and the dispute was settled but, because Tasmania was closed, no one from Tasmania could come.

When the Tasmanian was back, and you could get by ship to Melbourne, the employer said, well there's no longer an interstate dispute, it's settled everywhere, so you have no jurisdiction. It went to the High Court and the High Court really said you can't do that. This is what Justice Higgins said: *'the absurdity is instead sufficiently patent in a (this is a slide) in the present circumstances for it was owing to delay caused through the influenza epidemic that the Tasmanian case had to be presented after the cases for the other states. I feel strongly that it is the duty of this Court in construing such acts as the Conciliation and Arbitration act to find out the main object which parliament had in view and not to attribute to parliament, unless compelled by the clearest words, a meaning which involves futility or absurdity.'*

In other words, no one foresaw the pandemic. Now history doesn't repeat itself. There were no great changes in Australia after the influenza perhaps because we'd had sixty thousand die in World War One but it's very clear that this current Covid 19 pandemic will lead to significant changes. Already, we've seen work being done online, work at home, we've seen the importance of workers in aged care homes and nurses and in our health



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industry and we've got a new appreciation and we're going to have to rethink casual employment. If casual employment is intermittent and casual then that's perhaps okay but if casual employment means permanent precarity then we're going to have to think about issues such as sick leave and vacation perhaps through national schemes like national long service leave schemes.

We are in new and uncharted territory and I'll just end by saying I am not really fit to predict the future. In 1982, I was in East Berlin and was searched going across Checkpoint Charlie or whatever it was called. If you had told me that, within seven years the Berlin Wall would come tumbling down, I wouldn't have believed you. So, let's wait and see what happens and how this pandemic reshapes our lives. Thank you. I'm now going to hand over to the president of the Fair Work Commission, Justice Iain Ross and I can't resist saying he was also one of my very best students.

Justice Ross: Thank you very much Ron. I don't remember you saying that when I was a student but I appreciate the comment. Now, good evening to everyone who's attending this evening's debate. I'm delighted to be chairing it and for tonight's debate we have two representatives from the union movement two from business and two from Academia and their bios are in the background paper which was circulated prior to today's event.

I would like to welcome from the union side, firstly, Sally McManus, the Secretary of the ACTU. Hello Sally, and Annie Butler from the Australian Nursing and Midwifery Federation. Hello Annie.

Annie Butler: Hello.

Justice Ross: Thank you, and on the business side, I'd like to welcome Jennifer Westacott the Chief Executive of the BCA. Hello Jennifer.

J. Westacott: Hi.

Justice Ross: And Innes Willox, the Chief Executive of the Australian Industry Group. Hello Innes. Our two academic representatives are firstly Joellen Riley Munton, Professor of law at the University of Technology Sydney and the vice president of the AIER's board. Welcome Joellen, and last but not least, I'd like to welcome David Peetz, Professor of Employment Relations at Griffith University and a co-researcher at the inter-university centre for research on globalization and work in Canada. Hello David.

David Peetz: Hello everybody.

Justice Ross: As James mentioned earlier, this evening's debate is in two parts. We'll begin by having a three-minute presentation from each of our participants on the topic of '*Covid 19 has shaken up the whole world. Where to next for IR in Australia?*' Each speaker will be given a 20-second warning before their time is up. Once we finish the presentations, the debate will begin and I'll be putting questions to different members on our panel and I would ask that they keep their answers to about two minutes so that we can get a range of views and perspectives. The main questions that I'll be putting are set out in the background



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paper that's already been circulated and I might pick up on some people's answers and get others to respond. We'll see how we go. As you all know, the questions that we'll be putting to our panellists concern the broad topic of, '*What is the impact of the Covid pandemic on work, employment, labour relations globally and locally and what impetus and opportunity does it present for reform?*' So, if we can start with the individual presenter presentations and Sally, I'd ask you to go first.

Sally McManus: Thank you Iain. I'd like to acknowledge I'm on the land of the Ngunnawal People in Canberra. I'd also like to pay my respect to Ron on behalf of the union movement for your contributions and your giant intellect. I want to talk about when flexibility isn't a two-way street so in addressing the issue of flexibility it's really good to do so within the context of the pandemic of Covid 19 because really there couldn't have been a bigger stress test on our set of workers' rights. You know, we've had workplaces shut down really with no notice in so many circumstances, overnight a significant reduction in business activity, reduction in hours, changes in where work's performed as was mentioned with working from home and even big changes in the type of work that people have needed to undertake during this pandemic and it's happened to all of us, to workers and to employers, very quickly and in a way none of us could plan for.

So, really, I think the question is what has this nationwide rolling test taught us about our system of workplace rights in our country. Now, first of all, have our workplace laws been flexible enough to respond to what's happened in all the myriad impacts that I talked about because quite often commentators will talk as if it's a truism that our workplace laws are so inflexible they're so inflexible they stop things happening, it's the big problem and I would really challenge that premise and I challenge it not through listening to what I say but thinking about what has actually happened in our country in this big experiment we are all forced into very quickly because over the last six months you think about how our set of workplace laws have responded.

There have been temporary changes that have been made to awards across a whole lot of awards to adapt to what was needed in that particular time. There have been temporary changes made to the Fair Work Act as well with the JobKeeper. To enable JobKeeper, unions and employers right across the country have negotiated significant changes and they are different depending on how you're impacted by the pandemic under their enterprise agreements or just locally. They've negotiated them and you know some of those include having to move whole workforces to work from home and the majority of these places where there's been working from home there's been strong union presence so public administration in banks in larger workplaces and so what has all this – you know, meant – like what's happened?

So, what's actually happened is change has come about in an orderly and in a uniform way. It's happened quickly. It's happened with safeguards. So, yes employers have needed flexibility and everyone's needed flexibility to deal with this crisis but it hasn't happened without protections or safeguards for working people so that would be safeguards that already exist within our laws or ones that were included in the JobKeeper legislation such as the ability of the Fair Work Commission to arbitrate any issues that come before it. And changes of course have been made actually by and large by



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negotiation at local levels, so this has been the biggest calamity in terms of work workforces or workplaces in our working lives in a generation, maybe a few, and it hasn't been the law of the jungle in Australia unlike a whole lot of other countries where changes happened, workers have had no protections whatsoever and employers also have had to make things up as they went along, or there's been unfair competition because of that too.

So, I would argue that there can be no doubt that our unique system of awards, agreements and, where it's been enlivened, a tribunal that can deal with issues, it's ensured the flexibility that employers have needed to deal with the pandemic as well as protections or fairness for workers, and I reckon that this is something we should celebrate as a country – should be something that we should be proud of, the fact that we have this system that we have developed together over a period of time and it stood up under the biggest stress test it's ever going to get.

Justice Ross: All right, thank you. Sally, we might need to leave it there and in order to keep moving it along can I go to you next Innes and get your short perspective on this broad issue.

Innes Willox: Thank you Iain. Thank you very much and thank you to Ron again. I join with Sally in passing on our thanks for all your work as well and thank you to the panel for joining us tonight and to all in the audience. Always an interesting topic. In many ways, I agree with Sally who's just wandered off. I hope it's not just because I'm speaking...

Sally McManus: I've got a plug – I've got to plug in my thing again before it runs out.

Innes Willox: I would agree with Sally in many, many, ways the system has stood up and held up remarkably well through what has been the first six or eight months of what will be a longer running pandemic. We're probably at the end of wave one and there is more to come. When I talk to employers now, the big issue in the front of their minds is not industrial relations. Largely, it's issues around investment, it's issues around skills, around labour mobility, it's about how do they get through this next phase and the phases that will come after.

We saw, as Greg mentioned, millions of people unemployed globally displaced. Within Australia, we've seen 3.5 million people on JobKeeper at its peak. That's coming down now but we have seen massive disruption occurring, so I think Sally's right, the system has done very well to get through where it has – it has built-in flexibilities, both for employees and employers to get them through to this point but those sort of issues that employers are looking at are the sort of issues that are going to be the broader long-term issues that we need to address as well.

Ron, in his opening remarks, talked a bit around the disruption that is to come. I think from an employer perspective you are likely to see more disruption come in what might come under the umbrella of industry 4.0 – digitalisation, automation, machine to machine learning. The skills that are required to adapt to work in that sort of economy are going to be crucial. They're the sort of things that employers are looking at now. That's probably where the sort of the next area of flexibility, if I can use that word – Sally you introduced it, and it's appropriate to use – but that will be needed in the system and that's where



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employers are looking to the future, no doubt as they try to adapt and change how employers and employment emerges from this particular part of the crisis is clearly still to be determined but there are three quick areas to look at: awards, enterprise bargaining, and the role of casuals, and I'm happy to talk about those more during the debate, but that's sort of the macro picture from an employer perspective. Back to you Iain.

Justice Ross: Thank you, Innes. Joellen, can we get your perspective on these issues?

J. Riley Munton: [sound muted] ...has treated labour higher and the way labour hire practices have contributed to the proliferation of precarious forms of work. Now, of course, labour hire, when it is genuinely hiring temps such as secretarial staff to fill in for a secretary who's on a, you know, a couple of weeks annual leave, works very well to treat the labour hire agency as the employer, but I think the fact that Australian labour law treats the labour hire agency rather than the host employer as the employer with responsibilities has in fact encouraged the overuse of labour hire and has – we've seen labour hire being used for regular labour forces. We saw that with the Workpac cases.

The Workpac cases were a problem because those labour hire workers were not really temporary casuals. They were on 12 months out rosters. Now, the number of stories we've seen through the pandemic about aged care workers in particular spreading the disease because they've moved from one workplace to another suggests that workers are needing to take a lot of assignments in different workplaces in order to make up the hours they need for to get a decent weekly wage and they're all casual or, worse still, they're independent contractors. We have to ask ourselves why don't they just have one job in one place? Why they're all moving across working everywhere? Why don't they have paid sick leaving entitlements so that they can actually stay home when they're sick? Well, it's because the operators of businesses want to avoid the costs of direct employment and labour hire allows them to do that and labour hire is cheap and if you don't believe me, have a look at the personnel contracting case that the Federal Court decided this year. It showed that a 22-year-old backpacker engaged on a labour hire contract could be paid only 75 percent of the wages he would have earned as a direct employee of the host.

He was an independent contractor. He had no right to award wages and no paid leave entitlements. The case says we'll tolerate that because it's been going on for more than 15 years. I would suggest we need to look again at the decision that was made some years ago about who the real employer is when you've in fact got a permanent workforce. Thank you.

Justice Ross: Joellen, can we go to Annie? Can I get your perspective on this issue?

Annie Butler: Yes, thank you very much and thank you so much for the invitation and I'd also just like to acknowledge that I'm joining the meeting from the lands of the Wiradjuri people and pay them my respects and also respects to all my fellow panellists. So, from the perspective of my union's members – that's nurses, midwives and aged care workers, who've definitely been at the forefront of dealing with this pandemic – I have to say that Covid 19 has indeed shaken, and, in fact, is continuing to shake up the whole world, and while recognising that the second wave in Victoria has been extremely challenging, Australia's



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actually been fortunate with regard to the Covid 19 outbreak compared to many other countries around the world. And while Australia has a number of natural advantages – pragmatic action taken by governments and their engagement with and responsiveness to health and other experts and their advice has led to what is regarded globally as successful containment of the pandemic outbreak.

That said, our management of the Covid outbreak has revealed much about us. It has not only highlighted but also deepened our existing inequities and shown us that our systems favour some Australians over others. It's shown us our strengths and weaknesses. Our health response from an adaptable universally accessible system staffed by highly skilled clinicians and largely underpinned by a sophisticated industrial framework which assists in the delivery of quality care has been our great strength and, while our weaknesses have been several, from my union's perspective, our aged care response has been one of our greatest weaknesses – a fragmented immature system poorly staffed by a lowly paid, often lower skilled, predominantly female workforce without a strong industrial framework that supports the delivery of quality care and which consequently, although tasked with protecting and caring for some of our country's most vulnerable, has been shamefully inadequate in its response to the pandemic as so tragically demonstrated by the situation seen here in Victoria.

So, when we ask, where to next for IR in Australia, in comparing these two responses I think we should ask what role our industrial relations system can have in turning these weaknesses into strengths what should the goal of our IR system be? Rather than just balancing the interests of employers and employees, should its goal be to consider the kind of society we want and whether we can make that one that provides for all Australians equally and so how can we develop and embed an IR system or improvements to our IR system that will contribute to achieving such a society. I think these should be the big questions for the future. Thank you.

Justice Ross: Thank you very much Annie. Jennifer, can I go to you for the BCA's perspective?

J. Westacott: Thanks Iain. Thank you everyone. Can I acknowledge that I'm on Ngunnawal country in Canberra and can I pay my respect to elders past and present and also acknowledge the great work of Professor McCallum. If I cast back and forward, the last time we achieved transformational productivity-enhancing industrial relations reform was in the Hawke and Keating era, and it's because everyone could see a national imperative for change. At other times, changes to the system I think have been met with different views about whether change was really needed or whether it was the right change but there's no doubt that that work we undertook in the 1980s supported in some part by the opposition was work that was shared by the business community in the trade union movement and that great convergence was driven by a shared view about the seriousness of a threat to Australia's future prosperity.

Now, that was not an external threat like a virus or a war or a global financial crisis but the threat that was caused by the structural barriers holding us back from competing with the rest of the world and government business unions and the community rallied around a national reform agenda and what needed to occur because everyone understood that



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working on that reform agenda was how people stayed in work – in good work, in secure work, and those big reforms gave us that 30 years of uninterrupted economic growth. I think we're at a similar point now. Even if Covid hadn't happened, there was a need for us to come together but Covid has put many of the big trends in our society on steroids and so we need to find that same sense of shared purpose and working together.

If I think about some of those big seismic changes, our economy's way of working was already transforming with rapid technological change and task change through digitization, empowered consumers are changing the way production is done, but Covid has also, I think, put into sharp focus the enormous downside of long-term sluggish wage growth, of falling business investment and our stalled productivity growth so what do we want (to Annie's point) out of a modern workplace system? Well, we want people to have jobs, we want them to have secure work, we want them to be able to stay working on their lives, we want them to have easy access to the skills they need today and tomorrow, we want them to be safe and we want them to be able to work with their employers to determine the best way they can be more productive so enterprises are successful, and they can share in the benefits.

So, for me, the most important thing for us to improve upon going forward is the EBA process. I believe for us to be more productive, for us to be successful, for us to recover, we need to reinvigorate the EBA system. It's the only way we're going to get people back into work, into new jobs. It's the only way we're going to increase wages, and it's got to be a system that drives productivity, that drives fairness and drives a more successful economy and I've got five key principles quickly: make the enterprise more successful and share those benefits with employees; incentivise the parties to achieve mutually beneficial outcomes; simplify the process and don't let it be dominated by technical technicalities; deliver agreements that genuinely get to the enterprise-specific arrangements and allow agreements to depart from awards where parties agree.

I believe fundamentally that unions and business have got a crucial role to work together to deliver those modern and productive workplaces and I want to place on record my thanks to the ACTU for their cooperation throughout this crisis because it's that cooperation that has kept people tethered to their jobs and I believe this has saved tens of thousands of jobs. Together, I think we've got a moral imperative to act on unemployment. The most immoral thing a society can do is to wilfully allow unemployment to spiral, so our national task together is to get people working again I believe a good EBA system is one of the central platforms along with the things Innes talked about to get people working again if we want people to have secure work, good jobs, rising wages we've got to also remember that our starting point is a strong economy driven by the private sector that sees businesses get up and running again alongside our long-term, well-run social safety net and a very strong set of provisions to make for a fairer, more inclusive society.
Thanks.

Justice Ross: Thank you very much Jennifer. Can I ask David Peetz to round out the presentations from the panel?



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David Peetz: Thanks President Ross and to Ron and to the traditional owners of the Turrbal country from where I'm speaking. Now, I'm going to summarize some research we're doing on working from home under Covid and then talk about what that means for IR. So, a group of us studied 11 000 employees in Australian and Canadian universities through an online survey earlier this year and I'm talking here publicly for the first time about our initial findings. Now, we might think of universities as being staffed by academics but more of them perform administrative or professional roles similar to those in our or other organizations and we found that people varied a lot in how much they wanted to work from home. One thing was clear though. Most people wanted to do some of their paid work from home but very few wanted to work from home all the time or none of the time for about a third of the employees or roughly 50:50 balance between working from the office and working from home would be ideal.

Another two fifths would like to do a majority of their work at home and a quarter would like to do a minority from home, so overall it wasn't a simple story. Homeworking had a lot going for it but we also saw some longer working hours, interference between work and home and high stress and job insecurity. The bottom line was working from home is all too complex for simple managerial edicts to work without involving employees and their representatives and decisions. So where to for IR? Homeworking might well be the biggest change in work over the next decade, but it has lots of dangers. If managers think they unilaterally know what to do, they could turn disorder into chaos, but there are also big opportunities for organisations in finding more efficient and cheaper ways of working, for unions in representing workers with whom they've encountered new ways of communicating and organising, and there are implications for how we regulate, especially through awards.

The commission changed some working time regulations to allow for homework and it signalled that some portion of changes might need to be permanent. Rather than abandoning regulation of working time we need to think about contingent regulation of it. Some regulation of working time reflects how travel and disruption makes short or split shifts very problematic for workers. Those issues are transformed when people are working from home so regulation that's suitable for the employers' premises isn't designed for work from home. Well, that doesn't mean you abandon regulation of working time at the employer's premises. It means we need to think about regulation that's conditional on where employees are working. Different working time regimes should apply where the pace of work differs and getting that right will be a challenge for all parties. Thank you.

Justice Ross: Thank you very much David. Well, if we can begin with the questions to each member of the panel. You'll recall that we'll draw those from the discussion paper that was circulated earlier, and I'd ask you to try and keep your answers to within two minutes. Sally, if I can go to you first, you touched on the resilience of the system in the face of the pandemic and its flexibility but then that opens up as David's mentioned that the world of work is changing in response to it and so what features of the current system do you think need to be changed on the basis of what we've learned through the pandemic?

Sally McManus: Well two things. First of all, I talked about flexibility but there's a problem when flexibility is just a one-way street, and as the other speakers have outlined, unfortunately, a whole lot



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of insecure work is that sure there are a lot of people that have wanted to have insecure work and know upfront what the risks are and take those risks. That's not what I'm talking about. What I'm talking about are the business models that have developed around it. For example, the business models around labour hire and, really to move forward from this, we've got a big problem in that not all employer groups but some employer groups won't even accept that it's a problem. In fact, probably some of them say it's a good thing and that there's, there's as number insecure jobs that we have that that is in fact a good thing and I'd argue that it's not and that in fact people will not have confidence to spend and for us to rebuild and to be a stronger community unless we do address it.

The second big change is obviously the one that David has touched on and that's working from home. There was various attempts at this in the 90s and now it's happened en masse in lots of different ways and technology has evolved a lot and our experience is the same. People are about as split about whether they like it or whether they don't and it's interesting to hear those insights and I do think that this is a challenge that we need to deal with together in terms of making sure that into the future there's going to be more working from home. That's not necessarily a bad thing, but how do we protect people against work intensification and about – and from the mental health problems of not having that boundary between work and life?

Justice Ross: All right, thank you Sally. Jennifer, can I just get your perspective on this? One of the questions that's in the discussion paper is how can we build it back better and it's got – it was interesting to me, it's got in brackets after it, for example, more security or more flexibility and they're almost put as alternatives. Do you see the question of security and flexibility as alternatives or are they things that we can pursue in tandem?

J. Westacott: Yeah, I don't see them as, if done properly, as at odds with one another. I mean, if we want people to have secure work and we do then we've got to have the right arrangements that allow enterprises to adapt and change so that people can stay working. I mean the most – the greatest threat, as we've seen, to job security has been the failure of businesses, and so it's absolutely crucial that we get – that we don't see these things as competing and that we design that properly. I do agree with Sally that flexibility is not a surrogate for removing people's rights. It is about making sure that we can have the agility that enterprises need to respond to rapidly changing circumstances. That's not the same as eroding people's fundamental rights and I think we've got to get that conversation absolutely right. We've got to deal with I think in terms of putting back better, we've got to start really watching on the inequality front. We've got to keep – make sure that we do not see the structural exacerbation of inequality, be it gender, be it insecure work, be it lack of protections for people, but most importantly, be it long-term unemployment, which I think will see, you know, huge problems with inequality, so I think that – I don't see them as contradictory, Iain. I see them as things if designed properly, greater flexibility, if done correctly, should see people with secure work and, certainly in the short term, that greater security is going to see people having a job and returning to the workforce.

Justice Ross: Thank you Jennifer. Innes, in your opening remarks you identified three areas and one of those was in this space that we've just been discussing and that was around casual



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employment and you sort a change in the definition of casual employment. What's that about and why do you think you need to change the definition?

Innes Willox: Well Ian, we've seen through this pandemic some change in the makeup of employment, of those who are employed. We have a constant debate running between employers and unions around the amount of casualisation within the work force. It's remained at about 20 and it's gone down since the pandemic hit. Now people look at that coin from two different sides as to – as to why and how but what we would argue is that you know we've seen and it was mentioned earlier of the case around Rosato and the like is that there needs to be some certainty here around what casual is, some clarification and some certainty both for the employer and the employee. That's very important at the moment. There is no certainty thrown up by the Rosato case and we believe that that should be resolved so that there then can be important re-employment and re-engagement as the pandemic works its way through.

Our big concern here is that I think as others have mentioned, particularly Jennifer, that the outcome here is about trying to get people back into work. Our big concern here is that people will be denied employment opportunities because of that uncertainty that arises at the moment so a clearer definition around what a casual is, within the auspices of the Fair Work Act, would be – would be a very good thing for employment outcomes and then that leads to the point the discussion that Jennifer and Sally were just engaged in around flexibility and fairness but until you get that clearer definition you're going to miss out both on the flexibility and the fairness perspective; flexibility for the employee and the employer and fairness within society as a whole, so we just see that as an issue that needs – the employers see that as a key issue that just needs to be addressed as we work our way through to the other side.

Justice Ross: All right, thank you Innes. Joellen, can I get you to come in on this point that, you've heard, Sally made the observation that it's about, in relation to, for example, casual employment, there are some people who prefer that form of engagement but it's not about imposing it on the broader spectrum. How do you see that working in the labour hire space? There may be some people who prefer to work in that, in that field, and others who may have little alternative, but how do you distinguish between the two and how would you go about addressing the issue you raised about the cost differential?

J. Riley Munton: Well, I think that when labour hire – that the labour hire is a temp agency and they genuinely are placing people in different places all the time it makes sense for those people to be casual employees. I'd say employees, not independent contractors of the labour hire agency, but I think when it's, oh we're going to place you, Mr Rosato or Mr Skene, on a 12 months, working side by side with direct employees on you know fly and fly out mine sites, for 38 hours per week, I think at that point you say, those workers have now become employees of the host. You've got to actually look at the reality of the situation, not simply a label that somebody chooses to put on it because, to be perfectly frank, not all employees who are engaged are going to look at the legal labels. They're going to say oh what am I being offered here? I'm being offered indefinite employment 38 hours a week at this mine site. They're not looking at oh this is called casual and that



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means I get this and that means I'm not entitled to that. We have to actually regulate around what the reality of the relationship is.

Justice Ross: Thank you. Annie, can I go to a point that you made during your presentation and that was about what the objects of the system might be and this also was picked up by Jennifer's comments when she was talking about in the past reform efforts have been on the back of a shared vision and a shared purpose for engaging with a particular crisis or a problem. If we step back then from the minutia, what would be the system, what would be the objects of the system as you see it? What do you see as the basis for perhaps that shared vision about what our industrial relation system is doing?

Annie Butler: Yeah, thank you, and it's a point I'm very keen to make and coming from it very much from a health / nursing / care lens because industrial – the industrial relations system has the capacity to deliver us things that we want as more human goals, health goals and better outcomes for individuals who are care recipients across a whole range of settings in our society.

So, when we're touching upon the concerns of insecure work or very poor wages, if we're looking at aged care undervaluing of work they're all significantly important things that we can use the industrial system to improve wages to improve conditions and in fact to improve security. From my sector, flexibility way too often means cutting staff when you feel like it rather than they talk about flexibility because you might need to staff up, but that never happens so – but what is very important for both nurses and care workers is to fulfill their professional objectives and that is to provide the best care to the person who needs it as they need it, what they need, but to realise that professional objective often needs an industrial measure underpinning it, so it's not just about wages and conditions. But if we look at the situation in aged care, had we had a better underpinning industrial framework, we could have avoided much of the – quite honestly – much of the premature deaths that we've seen in Victoria because one of the reasons that we have the unstable employment and people needing so many multiple jobs is because there's no requirement through an agreement or any other law for a mandated staffing, which is the opposite from what we have in the health system.

So, an industrial arrangement that says how and when and what sort of staff we need actually can deliver improvements to those other aspects and ultimately what we – well I hope – we're trying to seek: equal care for everybody.

Justice Ross: Thank you Annie, can I just shift the focus for a moment and, you'll recall when Greg Vines spoke, he spoke of a perfect storm of multiple challenges facing us, the pandemic being one of those and climate change being another. David Peetz, can I ask you to comment on what you see as the intersection between climate change and workplace relations reform?

David Peetz: Well, particularly in the context of what we've been talking about today – things like increased working from home will have a fairly mechanistic relationship to the amount of carbon emissions that happen, so that's one not very exciting but important aspect of it but I think there's some common themes about how we would go about dealing with the



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current big issue of Covid 19 and the long-term big issue of climate change. A part of it is about putting in the right prices, the right incentives in place. We need to have in response to the current crisis, the incentive – removing the incentives to cut corners and to go to work where you shouldn't be going to work, or hiring the wrong sort of people or whatever, and just as in climate change, we need the right price incentives not to pollute to – so making sure that the organisations pay the full price of any carbon emissions.

Another common aspect of it is finding money. You've got to get the money out of the budget to spend on investment in health care on investment in technology and jobs for the long term for the climate issues and stop thinking short term. Start preparing now for future pandemics and start preparing now for the importance of reducing and ultimately eliminating carbon emissions. Think now about what investments do we need to make in order to cut down carbon emissions and there's also something about the value of labour that, you know Francis Flanagan who's at Sydney Uni, was talking about these issues of the value of labour before we had the Covid crisis talking about in the context of climate change about the importance of different types of labour that – and she's really focusing on the human activities that are positively necessary for the repair, renewal and regeneration of our souls, our oceans, our cities, our critical human systems and our human bodies. That's a quote from what she said in an article in Inside Story in February last year and Covid's really made us think a lot about the value of socially essential labour and we've also got to think about what is socially essential labour, in terms of dealing with climate change issues as well.

So, I think there's a lot of synergies in how we think about Covid and how we think about climate change.

Justice Ross: Alright, thank you David. Sally, can I go to you? Firstly, to if you have any brief comments on David's observations about the intersection with climate change and then I'd also want you to comment on the further opportunities for tripartite cooperation. We've heard from a number of speakers about the importance of a shared vision on the way forward and we've had the recent experience of the particular working groups, which has started a dialogue around some of these issues. So, both on the climate change piece and then on what are the future prospects for tripartite engagement.

Sally McManus: Okay, first of all from a different perspective. On the topic that David's commented on, it seems like forever ago but you know around this time last year or later in the year, really in the bush fires of eastern and also as in western Australia and the – the impacts of that, and those of you who live in Sydney will remember being completely coated in toxic ash for weeks and weeks and weeks and looking back at that time that seemed like to be one of the most serious, you know, disasters caused by climate change that we're dealing with and of course that was before the pandemic. You know, there's all questions about deforestation and our connection with nature but, all of a sudden, we were dealing with health and safety issues that we never had thought we'd need to deal with like when is it safe to be outside and breathe in air that was a hundred times more than what was considered to be completely off the scale toxic.



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That's what we were facing. Then, of course, you know the natural disasters in particular in the south coast of New South Wales and all of those workers who, because we're so dependent on a volunteer workforce, you know, losing their jobs because of that and now of course the pandemic so it's almost like there's a climate change disaster aspect of industrial relations or our working lives that are now going to be a permanent feature that obviously we didn't all design, no one designed, when they designed our workplace laws, so there's that to think about. On the issue of tripartism, I think it was a useful thing for, you know, government and unions and employers to get together and have discussions and I think that it's been too long between drinks, so to speak. So, I think that that is a useful thing. I think in Australia though that probably both sides, but in particular maybe the union movement, but I say both sides, are scarred by previous experiences like WorkChoices and I think that it's been difficult for – for everyone to move on from that because some actors from all different parts are still, in a way, reliving that.

And I think that the sooner we can start approaching these things from what our actual problems are, like record low wage growth, that we had prior to the pandemic, like seeing if we can find common ground on the issue of, okay, if we've got too many insecure jobs let's just accept it's 20 percent, you know, whether it's 25 or 20 percent, we've got too many, and then say okay, how do we go about changing that. That – that's what we're going to need to make some serious step forward in terms of how we go about things and that means that, you know, some people have just got to move on from 20, 30, 40 years ago.

Justice Ross: Alright, can I get firstly Jennifer's perspective on that and then Innes's. Jennifer, can I go to you first? What scope do you see for building on the five working group process into perhaps a broader discussion between the tripartite parties about the sort of things you were talking about earlier? How do you get or build a consensus based on picking Annie's observation, for example, some shared understanding about what are the broad objectives of the system, what are the things we have in common, rather than the things we have that divide us?

J. Westacott: Yeah, and I think that what's the alternative to that to going down that path? And who's the stakeholder here? I mean, the stakeholder is in the short to medium term that person who hasn't got a job, that person who doesn't know whether their job's going to come back, that business that's hanging on by a thread, and I think they expect us to find a way to Sally's point to kind of let go of some stuff from the past and find a way of working together, so I don't think there's an alternative here and I think the working groups have allowed people to sort of come together to at least exchange points of view, to identify areas of common ground but I think the agenda to your point is it's got to be bigger than just, you know, fixing up bits and pieces of the current system.

We've really got to have a look at the nature of work and the structure of work and how we deal with technological change and how we make sure that people have got good jobs. We've got to deal with those issues of inequality I've talked about and we have got to deal with productivity. We want people to have better wages, we want them to have higher wages and better conditions, but we can't go back to an economy that's growing at less than two percent with almost zero productivity. That is not an economy that's going to



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build secure work. It's not an economy that's going to pay people more and I would love us to be collaborating on that and finally we are not going to get those things if we do not co-design a new skill system that's going to prepare Australians for a world of work that is going to continuously change and Covid has put that really fast.

We have got to find a way of working together to get a skill system that allows people to retrain and reskill much more quickly, get recognition for that, so that they stay working and they stay working for the rest of their lives.

Justice Ross: Thank you and Innes, what's your take on this issue? The five working groups have of necessity focussed perhaps on the minutia of particular areas of change but there's obviously a broader issue here and just from listening to the participants on the business and union side, there's clearly an element of shared concern and value. There's a concern and a focus on low wages, on the need for employment, the need to provide for re-skilling opportunities, the need to address inequality. What do you see as the next step in taking this sort of tripartite discussion forward?

Innes Willox: Well, you know, I think you're right, there's actually the – the talks that we've gone through for the past few months have been necessarily constrained because they were directed working groups as it were, so the conversations were narrowed down to those specific areas around enterprise bargaining agreements, around awards casuals etc, etc. There is much more to talk about and much more that we can talk about so this has been sort of a narrow, very narrow, IR focused conversation and I think every time I talk with union officials – I mean, we come away thinking that we actually have more that we agree on than we disagree on. It's the old 80 20 rule and now the 20 gets blown up, it makes good copy etcetera, etcetera, but there's a lot there that we agree on, and those sort of issues that I talked about in my opening around technological change and its impact on employment, those sort of issues, the ones you just discussed with David around climate change and the adaption to – to our changing climate and the way that work will have to shift and change through that, now through the pandemic, the working from home scenario, something, for instance, just to pick one area where there's a lot of sort of rich pickings there between employers and the union movement to discuss because these are areas of change.

In many ways, I agree with where Sally was you know, you know WorkChoices sort of has set the framework under which we still operate in many ways because the system we now have was the response to WorkChoices and, as employers, we would argue, we wouldn't argue that we want to blow up the current system, but we do need it to be able to have the agility or the flexibility to adapt and change, so I think the working groups were good because, I think from the union perspective, and I know from talking to Sally and, and other union leaders they have felt excluded from the process for a long time and it's something that we have argued to government, state and federal, that unions need to be involved and there needs to be more tripartism. It's not the IR club as such at work. It's just bringing together different voices but I think into your point you know we can't go into where we think these talks will get to and what will happen next but I think what it does provide is the foundation for further discussions around IR issues in part but also those broader socioeconomic issues that do go to fairness that do go to wages that do go to



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productivity, all of those issues and how can we work through how – how can we work through those conversations.

The issue always for a lot of employers and union leaders too is that we – we talk at the high level, at the macro level, but a lot of the activity happens down on the ground. Maybe, slightly separate to those, sort of high-level, conversations so it's how do we get those high-level conversations and the impact of those to have an impact down on the ground as well in a realistic way and I think that's a big challenge that we face as well, so look, we can't really go into where this will go from here but I'm optimistic that at the very least this has put a platform in place that we can, that we can work from. The last point I'd make it in is that you know we talk about low wages. I would argue that relatively – relatively we're a high-wage country and there's – there's many bits of data to point to that but we're also a high-cost country so how do we, how do we manage that and how do we, how do we work that through? I don't think there's anyone sensible and that would be really anyone on the employer side who's sort of going out there arguing, saying we need to cut wages. That's not the, that's not the argument that we've, that is being put forward at all.

Touching on what Jennifer was saying is how do we get more productivity in a fair way out of what is paid. That's really what the, that's what the argument is, is really around but I think we have the platform to work from. That's probably one of the silver linings of this pandemic, if there are silver linings.

Justice Ross: Thank you Innes. Annie, can I go to you, just about the broad issue of what do you think the future of work is likely to hold and what do you hope it holds? So what's your aspiration and what do you think might be the reality in the period ahead?

Annie Butler: Thank you. For that very broad question, I guess what, from our perspective, for our members, that we would hope that the future of work holds security and – security and fulfillment and I think again I'm coming from it from a different lens rather from inside the system out in, what can we use – how can we use the system to achieve what we want? Because measures of productivity and economic growth are important but they're hard to apply to an aged care setting. What increased productivity do we want out of a nursing home. So, it's about, again, what, what is it that we're valuing and trying to achieve and so then if – we agreed, we agreed some time ago, 40 years ago, as a nation, that we would pull our resources and fund Medicare and because we had agreed vision that everyone should have equal access to health care. It's not perfect, you know many things wrong, but it's not bad.

We haven't made that decision around what is our purpose, what do we want from aged care. Consequently, we don't have secure work, we don't have fulfilling work, we don't have valued work, and we don't have an industrial relations system that is actually trying to achieve that, I would argue, at present. So, I think in that area the future of – and that we could extend that not just from there but to the care sector generally – I think we need to consider how women's work, traditional, I mean, I don't want to have to call it this but, it's seen as traditional women's work, because it's care work, that how that can be valued equally across the board and that then be supported by an industrial framework that will



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achieve safety, security and fulfillment, which will then necessarily, what I always say, if you have a safe and secure worker, you're going to have a safe and secure care recipient.

Justice Ross: Thank you Annie. Joellen, can I get you to take up this same theme about what the future of work might hold? We've seen during the pandemic a point David touched on earlier, the acceleration of some trends that had been evident in the workforce, and working from home, perhaps the most obvious of those. We've also seen some hospitality businesses pivot and doing more takeaway and meal delivery services. What do you see in the areas that you've been discussing that the future might hold?

J. Riley Munton: Well, look, at the risk of going back to ancient Greece as Ron did and being a bit of a Cassandra, I would say that I'm quite worried about what the future looks like because I can hear my kind of work being very well looked after, the kind of work that can be done at home, that David talked about, but I can hear the kind of work that perhaps Annie is talking about can never be done at home unless it's in somebody else's home and certainly those food delivery drivers you're talking about. I worry that inequality is going to be driven even further apart, that we'll have comfortable people who keep their incomes and can – can, what's this horrible word, pivot with the virus, and then we'll have other people who are forced into an even more dire form of serfdom and that really worries me and I do think our labour law system, as it's evolved, allowing such a widespread use of casual work and independent contracting has contributed to that, and I worry, when I hear business leaders saying, well we can't change that unless there's greater growth, because I ask myself whatever happened to the notion of redistributing some of the wealth that we actually have, and I see stories in the Sydney Morning Herald about aged care owners driving Lamborghinis and I see the people who are managing the delivery services, I won't mention the particular one, getting Cartier watches as little thank-yous. I don't see the postmen getting Cartier watches as thank-yous. I worry we're leading to greater inequality and unless we look at some of those really fundamental things, it's not going to get any better.

Justice Ross: Alright, thank you. David, you touched on working from home and the research that you've been doing in that space recently and it shows a diversity of views about a desire to work from home and how many days and you also spoke about some of the challenges. How do you think you strike that balance between giving – providing an opportunity for those who have a genuine preference for working from home on a number of days in the week and providing some security and safety for those who don't want to be working from home continuously?

David Peetz: Yeah, well I think it's not easy and I think that's one of, one of the issues that it's very difficult for us to sit on high and – and come up with some determination as to what's the best way of doing it. Ultimately, what it requires is discussions at the most local level between the employers and the employees and their representatives as to what's best, what suits the organisation best, what suits the employees, what's the best compromise we can reach out of that. It's – it's very hard I think, apart from maintaining some sorts of protections in there through the regulatory framework, for us to come out and say it should be done this way and I think it's very hard for any individual party to just say it



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has to be done this way. It really does require negotiations and discussions, tripartism at the, at the lowest level really.

Justice Ross: Jennifer, can I go back to you on this issue of productivity and I think it would be generally agreed that productivity growth is – is what underpins our living standards and our improvement in our living standards but you've heard from Annie about the challenges of measuring productivity in particular sectors of the economy and of course productivity is impacted by a range of particular measures and levers and it's not simply, I'm not suggesting that the industrial relations framework isn't a component of it, but there are obviously other components. What do you see is necessary to lift our productivity performance?

J. Westacott: Sure, well, first of all, can I just say that I totally agree with Annie about the care sector. I think, I mean, one thing that I think we have to stop post – or you know, as we get out of Covid 19, is to really look at the, the sectors where you've got some real stresses and obviously some of those are gender specific and, and look as to Annie's point, the value we're placing in, on, that, those sectors and make sure that those sectors are fit for purpose going forward and I agree it's – it's you know, what are the measures of productivity in a sector like aged care, and I think we've got to be very careful that productivity is not about and certainly not – not what I'm arguing for, people working harder for less money. It is about doing things better, smarter, being able to expand and, so to that point, what are the things that drive productivity?

Well, clearly, skills is crucial for that – making sure that people have the right skills to do the jobs, the right skills to stay working, and I would say, Annie, in the aged care sector there is a massive need for a huge injection of investment into skilling up people in the aged care sector. The second thing of course is business investment. Now, you know, this is simply a reality that if we want innovation, if we want expansion, you need businesses to be investing and they need the right incentives to do that, so you're absolutely right Iain, IR is not the only lever for productivity. Investment is a huge part of that and skills is a massive part of that and I think our skill system, albeit, you know, we've made some good changes recently, it is just not up to the task. It is too hard, it's too complicated, it's too expensive. The TAFE system has been allowed to fall into disrepair and, you know, if we're serious about productivity and we're serious about getting the country going again, we'll absolutely get cracking on skills.

Justice Ross: Sally, can I just get your perspective on the broad question of productivity and also the specific issues that Jennifer's raised, and the skill need and the need to provide a framework for ongoing skill development as we're in a rapidly changing world?

Sally McManus: Firstly, I'll make the point that, out of the OECD, the most productive countries, nearly all of them, have a collective bargaining system that isn't enterprise-only and I think that our restrictions on collective bargaining so that you've only really got one option and that's enterprise-only actually inhibits where we've got to go and the reason why I say that is because too often enterprise bargaining leaves unions or workers and employers in conflict over wages and unable then to be able to look at some of the bigger issues, often than ones where you've got common ground, because you've got this area that you're



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having combat over, and so the benefit of a system where you're able to settle those issues that are common across a sector in terms of wages. for example, in the aged care sector and then sit down with employers individually and, and say, okay, how can we address the issue of productivity here, knowing that those basic things aren't under threat leads to better conversations and leads to better outcomes.

Also, then when you're dealing with things on an industry level it allows you as the industry partners to be able to talk about also those bigger issues of, of skills and what, what are we going to need in the future, what are our plans, how are we going to go about this? So, again, it's not just because, you know, look at the evidence, look at the evidence of those countries that have higher productivity as well as a better share, labour share, of the overall wealth of the country, so better off, overall are in a situation where that, where they had that. Too often, in our country going to the issue of skills and going to the issue of productivity it makes it easy or a path of least resistance to take the lazy options and the lazy options of saying, well let's just outsource the labour hire, let's just use the visa system to, to avoid having to do what we've got to do in our country – the hard work of increasing skills and increasing productivity, if you've got all of these other ways of reducing costs and it leads to I think lazy management decisions.

Justice Ross: Innes, can I just get your perspective on this conversation around productivity and skills as the manufacturing sector is being seen as one of the pathways out of the economic consequences of the pandemic and what's your perspective on the skills framework we've got? Is it fit for purpose? What changes do we need to make?

Innes Willox: Well iain, you know, I think Jennifer touched on this a little bit, the current skills framework isn't fit for purpose and hasn't been for a long time. It's not delivering the potential workforce, nor the current workforce, in many ways, that employers are needing and wanting and there's a couple of reasons for this and it goes back through the education system. This is not an IR issue. This is a much broader issue than that. It goes back through the education system, what we're teaching, how we're teaching it, where we're encouraging people to go. One of the big laments of employers, for instance, at the moment, is in areas like construction, they just can't get girls interested in that sector or engineering, for instance, and you see – hearing a lot of employers saying they're not taking up their quota of graduates because they're missing out on girls and girls will help inform cultural change within organisations. They change perspectives and we, and we're dismissing that, and why are we missing that?

We're missing it because, at some point in the education system, girls are being directed in another way and, you know, we've got to fix those sort of problems around careers counselling and the like and so that's, that's one point I just made. Secondly, around the skill system itself, you know it, we need to upgrade it and adapt our training. There's a term I like to use which I've picked up from others which is that we need to develop employees with what are called new collar skills – combination of white and blue collar skills – the technological skills of the future, to do the process, processes that we need to have run, to be able to work in a digital economy, all of those sort of things.



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They're the sort of skills that we really need to pick up and run with now when we, and we're not doing that, and all of that will play into productivity and all of those jobs will be high paying, very rewarding employment for people, so I think this goes back beyond the, beyond the IR framework. Sally made the point around you know maybe taking the lazy option. I wouldn't call it the lazy option. I'd call it the option of greatest ease for employers in some ways because they just don't have the pool of labour that they need on the whole to develop the economy of the future, so manufacturing is going down that path your right lain. It has been a rock right through the pandemic thus far relatively but gradually, surely, surely, it is going down the path of higher skills being required.

The days of sort of sawdust floors are gone. It's technologically based, it's very advanced engineering, robotics, etcetera, etcetera, is going into it. You need highly skilled people, so my concern going back to the schools agenda is, as things are set up we're going to miss a lot of people and that's where the issues of inequality come in and that's so we need to address these issues now coming out of the pandemic so that we do reduce the levels of inequality that we have and will continue to have and will perhaps unfortunately grow unless we grow that skills base. So, it's about trying to provide opportunity to people through the education system and the training system. That's where we need to look.

Justice Ross: Alright, thank you. So, I think we're almost at the point where I'll throw back to James Fleming who will be taking some questions from our audience.

James Fleming: Thank you Justice Ross and that was a magnificent debate indeed. I've got a few questions here in the feed. So, just a last chance for anyone who wants to ask a question, you'll see there's a questions tab next to the live feed but I'm just going through what we've got so far. I've got one here about productivity which you spoke about Innes so perhaps I'll put this question to you. When you discuss productivity – this is from Karen Douglas by the way – when you discuss productivity, you need to factor in the crucial social support and care services disability support workers, aged care workers, child care educators who care for us and are developing the next generation yet many, many are women and all are low paid. How will productivity for these support and care services be valued in a post-Covid society and economy and Annie touched on this as well but perhaps we get your response.

Innes Willox: Yes, a little bit with where Jennifer was with her answer too, we have to look at productivity in different ways across different sectors and – but industry as a whole, all industry, is looking necessarily to become more efficient in the way that it works. That's for competitive reasons. It's for – it is for reasons of increasing production, all of those sort of issues, but each sector is different and – but productivity, increased productivity, does not necessarily equate to less jobs. Increased productivity in many cases where companies have gone down the path of automation, for instance, as a productivity driver have, have actually led to increased jobs within the workplace. It is a fairly regular occurrence so we are sort of stuck in a cycle here. We still are where productivity, to use it in the innovation sense, is seen as a job, job killer not a job developer, and all this ties back into the education and I'm with you Karen, the people most impacted by this downturn are the young and female and we have to find ways to get them into the workplace and be back into the workplace and skills and opportunity are the way to do that and the sectors you



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just talked about, particularly the health sector are clearly going to be one of the growing sectors of the economy, so it's about I think, in the end, to us, all roads lead back to skills training and education and that's – that's – that's where the opportunities will arise.

James Fleming: Thanks Innes. So, picking up on that thing, I've got a question here from Melissa Harvey and perhaps I'll put this one to you Sally. How should we balance the desire for productivity and say technological development to drive productivity with the challenge of associated job loss or an inability for some workers to upskill or diversify.

Sally McManus: Alright, there should be some fair sharing of productivity gains. First of all, people will much more want to engage in the productivity discussion if that's the case and it hasn't been the case for quite a while and from the perspective of – of workers obviously talking to a lot of them and representing them, this particular term, productivity, can be a dirty word and so it inhibits sometimes the discussions that need to be had around changes that may be inevitable in terms of technological change, changes that need discussions at workplaces and that, if that that happens in a mature way, there's an ability to look at how you would go about upskilling and differently skilling people, so I might leave it at that.

James Fleming: Thanks Sally. I've got a question here from Kate and perhaps I'll put this one to Jennifer. There's been a lot of discussion tonight about working from home and impacts on employees' mental health and personal life. I wonder also about the readiness of business to manage productivity and effectiveness of their workforce. What are your key concerns and barriers when it comes to business leaders and organisational readiness and I guess that's particularly in the context of working from home.

J. Westacott: Sure, look, I think, I think to David's point, I think there's a real mixed view about working from home. I think particularly the longer this has gone on I think all of the structural problems of working from home have started to become clear. I mean it's – it's we've got to make sure that we're very careful about sort of making these huge assumptions that everyone now will work from home and that it's good for everyone to work from home. It's simply not the case. I mean care workers can't work from home, supermarket teams can't work from home, and we don't want to create this bifurcated society of the people who kind of have a really good working from home and the people who have a really bad working from home and so we need to factor it into our workplace system. We need to factor it into our discrimination laws, we need to make sure that people working from home are safe, that it's a choice, that it's something that they can grow and gain from and – but, but we've also got to make sure that we put a bit of a gender lens to this as well what I don't want to see in a so-called post-Covid environment is that women are still working from home because we haven't fixed the child care system, women are still working from home and that's denying them opportunities for promotion and advancement because we haven't sorted out who's working from home and why.

So, I think it's a really important structural issue that we shouldn't sort of say, oh well, we don't need to worry about it, everyone returned to work. I think a lot of people will make working from home either part of their working week or a big part of their working lives. We've got to make sure that we start to put a gender equity, a safety, and a inequality lens on working from home.



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James Fleming: Thank you. We're getting a lot of questions now about skills that Innes particularly talked about, so I'm just going to raise two here and perhaps we could hear from both Innes and Jennifer about this if, you've got thoughts on this so, firstly, Mary Kirella asks, not everyone can be upskilled. How do we care for those who still need to participate in the workforce but don't have great skills and, relatedly, Monica Rose asks, there's agreement that upskilling / reskilling workers is one of the ways to build better. Should an entitlement be introduced into the IR sphere to fund and resource these upskilling processes?

J. Westacott: Do you want me to go first or do you want to go first Innes?

James Fleming: Yeah, that'd be great.

Innes Willox: You got in first. I was unmuting, so you go first Jennifer.

J. Westacott: Perhaps on the kind of question that some people can't be upskilled, I'm not sure. I think one of the things we've really taken our eye off as a country is foundation skills. I mean, we still have many people with very poor literacy levels very poor foundation skills and we've really dropped the ball on that I – I think that's an area where, you know, we've got to get a better focus to make sure that people can work, re-enter the workforce and – and participate fully, and of course, you know, we acknowledge that, you know, that requires investment from governments but I am still really alarmed and Innes I think you did some analysis on this a few years ago at the level of – of really basic literacy that still does not exist in many workers. James, just remind me what the second question was again.

James Fleming: Yes, sure. So, Monica Rose asks there is agreement that upskilling / reskilling workers is one of the ways to build better. Should an entitlement be introduced into the IR Sphere to fund...?

J. Westacott: We proposed a while ago this idea of a lifelong skills account that, that, that people would have and that would be made up of a subsidy and an income contingent loan and I think we've got to think our way through that because, and of course, an employer contribution would be part of that as well but I do think we have to find a way of making sure that we can fund that upskilling and that we can fund that in an equitable way and that's going to be based on the nature of the courses that people are doing, on the length of them. That's also about breaking down some of our clunky skill system into sort of more of these what people call micro credentials, but I do think we have to make sure that people can access the funding to retrain and reskill and that employers obviously will have to make contributions to that as well and that's a shared and collective responsibility. If we talk about tripartite, this is an area where I just think there's probably so much common ground, we really need to kind of get cracking with it between business, unions and government, just jump in there.

Innes Willox: I'll just jump in there, James, with a couple of things. I think we're not – I, I don't agree that some people can't be skilled. At the same time, we're not talking about everyone here being NASA rocket scientists or anything like that. I think we need to get away from that. This is about gradual building of skills. I chair the Migration Council of Australia. We do an enormous amount of work with the migrant community, just to pick a community, on



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helping them through their skills and for that a lot of that is English language skills and – and training and the like and it's across the whole gamut

Greg Vines [Interjection – Mr Vines' microphone is unmuted during a phone call] yeah thanks VG, yes I'm involved in two zooms at the moment...

Innes Willox: Hopefully, he's not about to give something secret away but anyhow, but I was just making the point that we should look at skills as everyone sort of being right at, yeah what you might call a metaphorical tree. There are just different ways of paths of building skills and I think we need to be open to that. The other, the other point is that we are in a, you know, now in a time of – of a demand, or a need for, lifelong skills development and the, and the old story around how many different jobs does someone have through their career or how many careers does someone have through their life, I think that's all real and realistic now, as people do more and more move on and so they need to adapt and change so in some ways skills can be as simple, I'll use the word simple, as developing the skills around adaptability. It's, you know, it's – it's just one thing to, – to think of and then what goes into that, those skills around curiosity, around being able to develop new skills, is a skill within itself. So, I just think that, more and more, as I talked about those new collar jobs, that is going to be more and more of what employment demands, going forward.

Annie Butler: James, can I can I just make a comment on skills?

James Fleming: Yes.

Annie Butler: Yep, sorry, just very quickly. I absolutely agree skills are critical and skills development, lifelong learning, nursing, has very much an approach to lifelong learning and I agree with Jennifer that there is a big skills deficit across the aged care system but there's also a very big personnel deficit across the aged care system. Skills are critical but skills don't matter much if there aren't meaningful jobs to end up in, so when we, look take example of registered nurses. We're pretty good at producing skilled registered nurses. We still have several hundred every year that we're not getting into meaningful jobs. We're not just losing those skills now, we're losing the skills for the next five years, potentially, in the next 10 years, so all this focus on skills is not really worth a lot unless we've also got a focus on meaningful jobs for those skills to be used in. Thanks.

James Fleming: So, I'll just give anyone a chance to reply to that if they wanted to.

David Peetz: Yeah, I'd just like to add a comment, not so much in response to Annie, but in the general discussion about skills. The trouble is that, as a society, we've moved away from properly resourcing skills development. In the 80s, late 80s and early 90s, there used to be national training levees – one point something percent – that was paid on salaries and organisations had to spend it on training and we used to have a highly-funded public sector TAFE system. The training levy was abolished, the TAFE systems, basically the public sector stepped back from it. It's predominantly private providers now and it's just not working, and we really need to think, not just the sort of terms of principles but also in



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terms of putting the resources in and putting the money into making skills development happen.

Ms Westacott: For me, about that, I totally agree. I've been banging on about it for years. We've gotta, you know, restore the funding that, that, you know, particularly in TAFE, and I agree with Annie about a meaningful job that's why I'm saying I think, you know, one area that we should really all double down on is the care sector, so that people do have rewarding, meaningful jobs and make sure that, that people have career advancement in those jobs in a sense of accomplishment, advancement and – and, of course, you know, looking at the pay and conditions, that would be in a kind of basic level as well.

James Fleming: Thank you. Anyone like to make any final comments before we cross over to Ron for his reflections? Alright, thank you very much for your participation to all the speakers. I'm gonna cross over to Ron to give his reflections on the debate. Over to you Ron.

Prof. McCallum: Thank you very much James and thank you to the debaters for a thought-provoking hour and a quarter. What is surprising to me, and historians will find surprising, is that we did have tripartite consultations between employers, trade unions and governments. Last year, it was fights between governments and trade unions. It was to them and us, from the Hayden Royal Commission, to a bad union behaviour Bill, and now we've seen, and credit must go to Attorney General and Minister for Labour, Porter, for having tripartite discussions. The trade union movement is not as powerful as it was in the 80s with the Hawk productivity reforms. It is about 15 percent of the workforce. There are large swathes of the private sector in the service economy where there aren't or very few union members and I think a great deal of credit must go to Sally McManus. I think her skills as a leader have come to the fore and I also give applause to the employers here, but I think for the union movement to pivot and get involved, there must have been thoughts in the Government that perhaps we could legislate this through, we'd get it through the Senate. I'm sure that's what many backbenchers thought. Let's hope we can build upon these tripartite discussions and get some real reform.

I think it's also clear from the pandemic that the idea that markets will always provide solutions is no longer full currency. Yes, markets are important, but I think we're going to see from the Aged Care Royal Commission, that the private sector or for-profit organisations shouldn't be running this very important area of our economy. I think there'll be a lot more scepticism of markets and we'll have to rethink the roles we have of government. We're also living with bad decisions, if I can say, with respect. I think it was a very bad decision to end the car industry in this country and now we've had to bring in some new manufacturing.

Globalisation will not go away but the pandemic has taught us that we have to be more self-reliant. Migration has slowed down to a trickle and imports are a problem and that we must think more carefully about how we utilise manufacturing in other industries. I found the discussions on working from home interesting and – and Joellen Riley and others made the points that, well, not everybody can work at home. Other people lost their jobs through no fault of their own. Many, many, many. You would think that being an airline



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pilot was a super job – a couple of hundred thousand a year and – mush! They're all gone.

Those of us that have jobs and can work for home are indeed fortunate. We have to do something about casual employment. I agree with Innes that we need to have a clearer definition but on the other hand if we're going to use casuals around the clock then we need to think about sick leave and annual leave for their safety and the safety of the community. We also need to think about the gig economy and what we do with independent contractors doing delivery work. We could have an intermediate category of worker, as happens in some countries, but as – as I think Jennifer said we're a very high wage country which makes our manoeuvrability more difficult.

We also need to think about the poor and should we be thinking about a basic income – universal basic income and, goodness me, if we want to help women and men, moms and dads, we need to do something about childcare. I found the debate fascinating. I'm delighted by the – the good will and I want to thank Annie and Sally and Jennifer and Innes, who I understand have all been involved in these tripartite talks, which I think could lead, I hope, to greater reforms and a more secure industrial relations system. Again, as I said in my opening remarks, I can't predict the future. It's a siren song to do that but there is much of the future that's in our hands and if we make sensible decisions and we do not waste this time, we can have a firmer foundation, just as our ancestors solved the strikes of the 1890s by a conciliation and arbitration system, which was clearly fit for purpose for the first two-thirds of last century.

Can I say, it's a great honour. I still don't know why this debate has my name, but I'm delighted and honoured to be part of it. Thank you.

James Fleming: Thanks Ron. And I'll just hand over to Michael Harmer in a second but I just wanted to answer one question in the feed that which – which asks will this be recorded today and let you know that, yes, this is being recorded and it will be shown on Sky Tv shortly and then we'll be uploading it to our website and we'll send everybody a link, so over to you Michael Harmer.

Michael Harmer: Thanks James. It's the aim of the Australian Institute of Employment Rights, in fostering the annual Ron McCallum debate, to have the truth emerge from the clash of differing opinions and what a wonderful array of differing opinions we've heard tonight, some of which you may have agreed, many with which, no doubt, you've disagreed, but all of which warrant your respect for they all serve to inform just as to what may be the optimal system of workplace relations for this country and it's the search for that truth that is the foundation stone of the Australian Institute of Employment Rights.

Now, in that context, I'd like to thank our illustrious and esteemed set of panellists tonight for their different perspectives. I'd like to thank Justice Iain Ross for his brilliant moderation of the debate – most insightful – Greg Vines, for bringing to us tonight a truly global perspective, which has been most helpful, and of course the brilliant Ron McCallum not only for his comments, but as he just indicated, for allowing us to name this debate in his honour, when, as you very much again observed tonight, he is not in fact dead yet. In



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fact, he continues as a bit of a living legend in our space and he inspires us a great deal and thanks so much for that Ron. Could I also thank the members of the AIER Executive, particularly James Fleming, our Executive Director, Jane Douglas, Mark Perica, Keith Harvey. Could I thank Redback Connect for handling the technological foundation for tonight's debate. Could I thank Michaela Nealon and AI Media for helping us to caption tonight's debate and to reach a more diverse audience and I guarantee we will continue to do that for every debate going forward.

Finally, could I thank all of you for your participation and attendance in the debate tonight. The pandemic has been extremely humbling for all of us. Hopefully, with that in mind, we can step away from our traditional positions, look to the public interest, and provide a good way forward for the Australian economy and all its people. With that in mind, thank you, take care, and good night. That's a wrap. Thanks.

END.