

TRANSCRIPT

AIER Ron McCallum Debate 2021, Thursday, 18th December 2021

Participants

Host: James Fleming, Executive Director, Australian Institute of Employment Rights

Chair: Hon. Justice Iain Ross, President, Fair Work Commission

Keynote speakers

Emeritus Professor Ron McCallum AO, University of Sydney, Patron of AIER

Greg Vines, Deputy Director-General of the International Labour Organization

Michaelia Cash, Attorney-General and Minister for Industrial Relations

Tony Burke, Shadow Minister for Industrial relations

Debate panel

Michele O'Neill, President, Australian Council of Trade Unions

Andrew McKellar, CEO, Australian Chamber of Commerce and Industry

Michael Kaine, National Secretary, Transport Workers Union

Innes Willox, Chief Executive, Australian Industry Group

David Peetz, Emeritus Professor, Griffith University

Sanushka Mudaliar, AIER Executive Committee

Emma Walsh, Founder and CEO, Parents at Work

James Fleming:

It's my great pleasure to welcome you to the 11th Annual Ron McCallum debate on industrial relations. I'd like to begin by acknowledging the traditional custodians of the land and to pay my respects to their elders past and present. I've just heard the sad news tonight that Justice Geoffrey Giudice passed away today, as you know, he was the former President of the Australian Industrial Relations Commission and the first president of the Fair Work Commission and a judge of the Federal Court. He was the second longest serving president in tribunal's history and very well respected by employer groups and unions alike. He was also host of the Ron McCallum debate for many years. He will be missed. On behalf of the AIER, I would like to extend my condolences to his family.

But looking at our registration list, it looks like we have over 700 people in the audience from across the industrial relations, community judiciary, government legal profession, students, as well as the media and broader public. So welcome to you all and thank you for coming. Thank you also to our debate participants and speakers and to our main sponsors tonight Harmers' workplace lawyers.

I'm James Fleming, the Executive Director of the Australian Institute of Employment Rights. The aim of the Institute is to promote better industrial relations in the public interest. We do this by promoting fundamental labour standards, by commissioning research and promoting cooperation and dialogue between unions, business and government, and by presenting new ideas for debate and reform. This debate is named after Emeritus Professor Ron McCallum who you'll hear from later tonight, both as a keynote speaker and then at the end of the event, when he gives his customary reflections on the debate. I'd like to say a few words about Ron, who I admire very much.

Ron is widely recognised as Australia's top labour law expert and one of the world's leading disability advocates. Ron has been blind since birth, and, as he relates quite modestly in his 2019 memoir, *Born at the Right Time*, thanks to new assistive technologies that became available and the encouragement of those around him, he became the first totally blind person to be appointed a full professor at any university in Australia. He's a past chair of the United Nations Committee on the Rights of Persons with Disabilities, the key global body for disability rights, and he was named Senior Australian of the Year in 2011 and is a patron of the AIER, and the debate is named in honour of both him and his life's work in promoting justice at work.

Turning to tonight's programme, the debate topic, as you know, is, 'are we still the lucky country, the future of workplace relations in Australia'. And you're going to hear from the leaders of politics, the labour movement, business and also leading thinkers from various perspectives as they reflect on this theme. There is a common perception in Australia that ours is the lucky country, a land with broadly shared prosperity that has avoided many of the problems faced by other nations. However, when Donald Horne coined that phrase 'the lucky country' to describe Australia in his influential 1964 book of that name, he actually meant it ironically. It was meant as a rebuke and a wakeup call, as an indictment of our society. It was a provocation, a warning Australians' success was based on luck rather than merit, that Australians were complacent, that their leaders lacked vision and Australian institutions and industries lacked innovation. Before he died in 2004, he wrote that his warning had still not yet been fully heard or headed. And now he whispers to us from the grave.

We've had a global pandemic, the first recession in 30 years, there's a growing divide in the labour market, and we're facing catastrophic climate change and economic disruption and the digital revolution. So tonight we ask, has our luck run out? Are we complacent in the face of significant problems. If we are the lucky country, lucky for whom? And we'll be looking at these questions through an industrial relations lens. What role can the industrial relations system play in Australians shared prosperity?

Before we get to the main debate, first, we're going to set the scene with a short film we've made for you and four five-minute keynote addresses from our distinguished guests. You'll be presented with a global perspective by the film and a speech from Greg Vines, who is Deputy Director General of the International Labour Organization. Then Professor McCallum will speak to the Australian context. Next, you'll hear from the Employment Minister and Attorney-General Michaelia Cash. The Attorney General is on a plane, so has sent a recorded address. Then you'll hear from Tony Burke, Shadow Minister for Industrial Relations. After that, I'll hand over to Justice Ian Ross, the president of the Fair Work Commission, who will chair the main debate and introduce our debaters. The debate will start with a round of rapid three-minute speeches from each of the debaters, and then the chair will ask them questions.

So, sit back and enjoy the evening. I hope you find it thought provoking, and without further ado, we'll play the short film.

Greg Vines [film]:

Australia cannot afford to be complacent in the current global circumstances in any issues relating to the workplace, industrial relations and reform. There has been a shock to the world, the likes of which none of us have seen in our lifetime. With over 250 million jobs lost around the world during COVID, the impact is four times worse than what it was in the 2008 global financial crisis. It's put the world at a point of a tipping point. We either break down or we break through but the choice is ours.

There's many challenges on the horizon, many of these challenges the ILO identified back as part of its centenary work around the future of work. But these have just got worse over the last two years. We've seen women in particular hurt incredibly hard through this, both in terms of their unemployment rate, which is now much greater than men, but also the extra burden that women have had to bear because of home schooling and home care. We've seen young people so seriously impacted. The problems that we had with youth before the crisis are only worse because now their education, their

training has been disrupted. We've seen some of the most vulnerable in society: the people with disabilities, migrants, people in the informal economy, they are just facing a shocking future.

The opportunities for building a better normal, I think, are enormous provided we take those opportunities. We can build back in a way that is more inclusive. We can build back in a way that is fairer. We can build back in a way that creates the jobs of the future and provides for the future. The future of work is not going to be the same as work in the past. We need to work collectively now to identify what those opportunities are. How do we make the most out of technology, but also provide the necessary protections around it? How do we make the most out of the transitions to climate neutral industry and work in the future? How do we ensure that the jobs are there, not just as jobs, but as decent work, as jobs that are highly skilled, that we have the skill development for people to provide careers and lifelong learning for them? We need to also ensure building back better provides the necessary social protection for people in work, people out of work, for health care, for support, lifelong support. We need global action around social protection. It is only when we get equity in our society that we are going to get the full value out of society.

We've got to address not just the future of work issues, but the future of work in the post-COVID environment. We've recently collaborated with UN women and with UNICEF on a project of providing advice to employers about how they can make more family friendly workplaces. And this, of course, includes such things as flexible work arrangements. It includes support for good, safe quality childcare options for workers, and it includes ensuring that we've got the social protection there that support that balance between family and working life so that we can ensure that as we move forward into the future of work, out of the pandemic, we have got inclusive, equitable and resilient workforces. The solution to the world's problems really sits in effective social dialogue. Australia is noted as having one of the most robust, one of the most successful industrial relations systems in the world. That's not to say that over the last existence, there haven't been challenges to it and that there haven't been problems to it. But I do think that one thing we can see with the Australian system is where we've had effective social dialogue between our three constituent groups, between governments, between workers and between employees. It has worked effectively well.

We've seen that it's fallen down when only one or one or two of those parties decide to go off in a different direction where we can maintain that cooperation, that collaboration, that common purpose, that's when Australia's industrial relations system is at its strongest. I think everyone is predicting this is not the last of the pandemics or the last of global crises that we will see. We need to ensure that we

learn lessons from the last two years and build those into government policy, into social partner policy and use those lessons as a way of moving forward collectively to what we hope will be a much, much better world.

James Fleming:

OK, and now I'd like to throw to Greg Vines in person to give his keynote address.

Greg Vines:

Thanks very much, James, and many thanks for the opportunity to join this Ron McCallum debate again this year. The theme of this year's debate is whether Australia is still the lucky country, and I'm not sure if it is or it's not. But I do know that we are going to need much more than luck for Australia and the world to get through the current global health, social and economic crisis. Humanity is experiencing the perfect storm. The impact of the pandemic, climate change and the rapidly advancing implications of technology. And on top of this, we've got the massive challenges that were already present in the world of work across the globe. People, businesses and economies have been very hard hit. Hundreds of millions of jobs have been lost and businesses have collapsed or are struggling. Less developed countries are suffering more than advanced economies, and their recovery is seriously lagging behind that of advanced countries. Inequality and social injustice are widening.

In 2020, the number of people living in poverty increased by 108 million, reversing five years of continuous progress. Existing vulnerabilities in the world of work, the informal economy, skills attainment, supply chains, gender equality and the challenges for youth have all been amplified by the pandemic and the risk of going backwards is very much alive. On top of this, we have the challenges and opportunities of just transitions for workers and employers relating to climate change and the challenges and opportunities arising from the rapid developments in technology. But we won't have a global recovery unless it's truly global, and we've got to build a new solidarity between governments, workers and employers globally and at the national levels, working together to find solutions, address the challenges and exploit the opportunities. This does call for a new approach to social dialogue to genuine engagement. We must get governments, workers and employers on the same page working towards a stronger, fairer and more inclusive society and world of work, and the ILO's role has never been clearer. We must lead the world to a better, more resilient, sustainable and inclusive future. And with all due respect to government representatives in the audience, this will require more than the typical short term national action restrained by political timetables. It requires global action similar to

when the ILO was created at the end of the First World War and the United Nations at the end of the Second World War.

Just earlier this week, the UN General Assembly called for stronger international cooperation and reinvigorated multilateralism and for the strengthening of global governance for the sake of present and future generations. It recognised the collective well-being, safety and security of nations and peoples are deeply intertwined. And it requires us all to work urgently and together across borders and sectors to address these global risks and challenges. We must make sure that the future leaves no one behind. In June this year, the International Labour Conference, which brings together governments, employers and unions from 187 countries, including Australia, adopted a global call to action for a human-centred recovery from the crisis. In doing so, they committed to work individually and collectively to address the global dimensions of the crisis, with the aim of placing full, productive and freely-chosen employment and decent work and the needs of the most vulnerable at the heart of recovery strategies. And it gave a particular emphasis to inclusive economic growth and employment. The protection of workers and universal social protection. And for this to be developed through social dialogue, that is, government consulting with unions and employers on design and implementation of national recovery plans to address the need for retention and creation of decent jobs, business continuity and investment in priority sectors to ensure a job rich recovery.

So, the commitments are there, but now the action is needed. So, if you decide today that Australia is still the lucky country, or probably even if you don't. I call on you to make sure that some of that luck is shared around. Shared around Australia to the most vulnerable and disadvantaged and around our region to those countries which have been hardest hit by the pandemic and will be the most susceptible to the impacts of climate change. Having lived and worked in many parts of the world, I reckon that comparatively, Australia still has got a bit of luck on its side. But now the question is how will we use that luck to make the world a fairer place before that luck does run out? Thank you very much, and I'll now hand over to Professor Ron McCallum.

Ron McCallum:

Good evening, everyone. May I begin by paying my respects to the indigenous people on whose land I'm sitting and on, whose lands those in Australia are sitting? May I also offer my condolences to the family and friends of my dear friend Geoffrey Giudice, who, as we learnt from our executive officer, passed away very recently when Donald Horne penned The Lucky Country over half a century ago, he used the word lucky as a type of jibe. In other words, we were lucky to find this bountiful land and

to take it over from our indigenous people and to build a society. He was saying we didn't do it through leadership or initiative so much as we were lucky enough to have our backsides on this land. I'm not sure that I totally agree with Donald Horne in the area of industrial relations.

Our systems of conciliation and arbitration for the first 75 years of last century worked reasonably well. They were systems of their time, male breadwinners-centric and paid insufficient attention and insufficient wages to our indigenous workforce. But they did allow the society, at least white society, to be relatively equal compared to many other countries in the nineties. With the economic reforms, we moved towards a system of enterprise bargaining and we saw that enterprise bargaining and the economic reforms of the Hawke and Keating governments with the support on many occasions with the opposition, we saw increases in productivity. But now the whole system's falling over. We're facing a crisis, as Greg Vines said. And as James Fleming intimated in his opening address, we have the pandemic, we have climate change, we have the increases in information technology and we have increased inequality in this country. We need to think boldly about what we should do in the area of industrial relations.

There are only half as many collective agreements under enterprise bargaining presently as there were even as recently as 2012. The whole workforce is changing, as for most Australians are now employed by small employers of less than 30 people. These small employing processes are unsuitable for the rigours of enterprise bargaining. We must think more broadly to ensure that all workers in our society receive appropriate benefits and that employers and businesses are given sufficient room to innovate and to translate into productivity for our country. It's important that we recognise that homeworking is going to become of significance and will continue that way, and we must work new ways of ensuring that home workers work appropriate hours, that they learn to switch off. We're going to need to ensure that the rampantness of harassment at work and discrimination are lessened. And there are dangers that in a more unequal society, they can be exacerbated.

What can we do to really help when the pandemic struck? We saw the government and the ACTU and the various employer bodies come together, with the Fair Work Commission and Justice Ian Ross, to have changes in our labour laws and in our awards to allow for a smooth operation of JobKeeper, as smooth as it could be, and to enable there to be a cushioning of the problems and displacements occurred by the pandemic. Further discussions took place, and even though there were agreements on many aspects of the 2021 Bill, they weren't passed. I think that what we need is what my colleague David Peetz would call managed centralism. I think we've leaned too much on

governments of all persuasions is a tribal element. Workers say well the Labour Party will help us, employers say the coalition will help us. I would like to see more dialogue between employers and employees and trade unions and employer associations. I would like to see management become more responsible for ensuring appropriate workplaces, that they will be free from discrimination.

I would like to see there being more security given particularly to gig economy workers who delivered us all of the benefits while we were stuck in our homes on Zoom. We actually have the capacity to do this, and my lifelong passion for industrial relations has been to ensure fairness for all Australians. And if we can think innovatively, the future is in our hands, and I pray for greater employee and employer dialogue. Thank you. And I think we're now going to have a recorded talk from Senator Michaelia Cash, Minister for Industrial Relations and Attorney General. She, at the moment, as I understand it, is on a plane, and we're very grateful that she made time to record the following speech. Thank you.

Michaelia Cash [film]:

I am pleased to address the 2021 Emeritus Professor Ron McCallum debate hosted by the Australian Institute of Employment Rights. As I reflect on the past two years and the many difficult challenges that the world and Australia has encountered, there is also a remarkable story of resilience. This is not the result of luck, but one of decisive action by governments, individuals, employers and employees. Underpinning this remarkable resilience are our strong social values and a strong economic foundation, A strong economy means that businesses can continue to pay their employees and the government can sustain financial support for the vulnerable members of the community.

A strong economy in the pandemic has meant that the government could extend safety-net support to those employers and employees who were hit hardest through no fault of their own. I am a strong believer that all Australians have a right to get a job and the dignity that comes with earning an income. In May last year, when the impact of COVID restrictions was starting to be felt just under 860,000 people lost their jobs in the June quarter GDP fell by seven per cent and we recorded our first technical recession in 29 years. Unemployment reached 7.4 per cent in June, the highest in 20 years. The tourism and hospitality sectors were some of the hardest hit, which disproportionately impacted women's labour force outcomes. Businesses were facing difficult decisions about letting staff go, or worse still, closing for good. We know that with the right economic settings, the labour market is resilient and can recover strongly after a shock. And this is exactly what we've seen following the initial impact of the pandemic in 2020.

Only three months after the economy went into recession, Australia's economy showed it to resilience, with two consecutive quarters of GDP growth above three per cent. In June 2021, 12 months after reaching a pandemic driven 20 year high in the unemployment rate, the unemployment rate fell to four point nine per cent, lower than the pre-pandemic levels. We recognise that the impacts of recent lockdowns across Australia are continuing to unfold, but I'm confident that we are taking the right steps to ensure that we're on the path to economic recovery. My confidence stems from the fact that the Australian government has, and will continue to, provide a strong economic framework that backs employers to prosper, grow and create more jobs for Australians. Our economic recovery was not the result of mere chance or luck, but one of a concerted whole of government community effort. Workplaces, adapted, restaurants and retailers shifted to delivery only models with contactless payment and office workers transitioned to their home offices with almost immediate effect.

The innovation and adaptability demonstrated has been truly impressive, aided by the Morrison government's timely intervention and support, including the highly effective JobKeeper scheme and the introduction of temporary flexibility provisions in the Fair Work Act. The financial assistance, coupled with increased flexibility for employers, has meant that more people could keep their jobs throughout the pandemic. The Delta variant has ushered in a new phase of the pandemic, and again, we've had to adapt accordingly. In response, the government has rolled out new fit for purpose support measures to businesses and individuals who've needed it. These include the COVID 19 disaster payment and the pandemic leave disaster payment.

At the present point in time, the highest priority for the Morrison government is the reopening of our community and economy in a safe way. This will require the cooperation of all Australians. Our four-step national plan agreed by the national cabinet in August this year provides a graduated pathway to transition Australia's national COVID 19 response from its pre-vaccination settings. Australia's vaccine rollout is on track. It is quite remarkable that millions of Australians have put their hands up and their arms forward to receive a vaccination. I think Australians have heeded the call and acknowledged that this is one of the key ways that we as a community can fight the virus together.

We encourage businesses and employees to take a collaborative approach to workplace vaccination and make workplace policies on a case-by-case basis, according to what suits their business best. Since March 2020, we've seen many instances of employers and employees coming together in their individual workplaces to implement sensible solutions to the evolving challenges posed by the pandemic. Working together for the collective good kept us going through the early stages of the

pandemic, and continued cooperation will lead us out of the pandemic. No matter how you define lucky, I'm sure we can all agree that our nation and our economy has shown its strength and resilience in weathering the worst of the pandemic. There is an end in sight for these seemingly endless lockdowns around the country, and the Australian government will continue to support those who need it most through these difficult times. I wish you all the very best for your event. Thank you.

Tony Burke:

It's a pleasure to be the next speaker in the debate. I'm joining you from my garage in Punchbowl, which is in Gadigal country of the Eora Nation. And I'm Tony Burke, the shadow minister for industrial relations. I want to particularly acknowledge Professor Ron McCallum and Justice Iain Ross and all the members of the panel and the guests. It's not often, in fact, this is the first time, that the Minister and I have been involved in a debate and the unusual situation where I get to respond without the Minister hearing me. But nonetheless, the battle of ideas that happens here is important and it's going to be a key difference between the parties as we head to the next election. And I think you can, while not every policy is directly here, I think effectively what you will see now and the difference between the government and the opposition will be both sides will be talking about jobs, but only Labor will be talking about secure jobs. Well, Covid didn't create insecure work, but it certainly put a spotlight on it.

COVID stress tested every workplace, to determine who was secure, who was essential, which workers the economy and the government was willing to cast aside. Around one million casual workers found themselves ineligible for JobKeeper. When we talk about JobKeeper wage subsidy, which when Labor first called for, we were told was dangerous and ultimately the government got there and it's good that they did. But if you had insecure work, you were less likely to be eligible for JobKeeper. They were the first people to lose their jobs. Others were excluded from JobKeeper for little apparent reason. University workers and certain aviation workers, for example. We discovered the most essential members of the Australian workforce weren't actually the professionals, they were the cleaners, the health workers, transport logistics workers, council workers, retail workers. They were disproportionately women and disproportionately in insecure work. When COVID began, casual workers lost their jobs eight times faster than permanent workers and accounted for nearly two thirds of the job losses. Then, during the recovery between May and November last year, casual employment was what surged back as the largest and fastest increase in casual employment in history, with women filling 62 per cent of the new casual jobs.

More Australian workers than ever now are working more than two jobs to survive, the rate of multiple job holding now being the highest it has been since records began. So, yes, as lockdown ends, we can expect more jobs to appear. But what kind of jobs? So, here's the risk, that what we'll see are more casual jobs, fewer secure part time jobs. Instead, part time jobs with minimum guaranteed hours and casual-like flexibility for most of what's worked. More gig economy based jobs, more undercutting of enterprise agreements by labour hire and outsourcing. And because of this, we'll also see a widening gender pay gap. If this does come to pass, we come out of the pandemic weaker than we went into it. All these forms of work have a legitimate place. They all have their place in the economy, but they have grown in a way that is disproportionate and that carries real risks to the economy and for the workers in those jobs. Unless there's active intervention, there's every indication insecure work is only going to get worse. Anthony Albanese has made clear of how plan to secure jobs, job security in the Fair Work Act, a proper definition of casual employment. The power for the Fair Work Commission to make orders for the gig economy, limits on consecutive fixed term contracts, ending the concept of permanent probation.

The government is a model employer, using the power of government procurement to favour companies that provide secure work, implementing all of the respect at work recommendations in full, having same job, same pay, criminalising wage theft and having equal pay laws. Rebalancing the Fair Work Commission and abolishing the ABCC and the ROC, both politicised and discredited organisations. But it gets to all of this, if I just finish with the example of the gig economy. We now have a section of the economy where all the guarantees of employment have gone, where the minimum wage is not even guaranteed. We'll open up the capacity for the Fair Work Commission to be able to set minimum standards. The government says this is too complicated and I'll just leave you with this thought. If it's too complicated to guarantee that people are at least paid the minimum rates in Australia, we no longer have an industrial relations system. And on that, I want to now pass over to somebody who has been at the centre of ensuring our workplaces were able to adapt to the extraordinary disruption of the last two years and introduce Justice Iain Ross.

Justice Iain Ross:

Thanks very much Tony. As James mentioned earlier, I too was saddened to learn of the passing of the former President, Geoff Giudice, earlier today. Geoff will be well known to many of those joining us for the debate. He was a man of great character, intellect and humility, a man for whom the title The Honourable was most fitting. I know that you will join me in passing on our most sincere condolences to his many friends and his family. The Ron McCallum debate brings the perspective of

the main industrial stakeholders – business, unions, government and independents, 'on the most pressing industrial issues of the moment, and tonight's debate is no exception. The COVID pandemic has led to significant changes in the way we work. It has seen the acceleration of digital transformation and substantial numbers of employees working remotely. No doubt some of these changes will endure and will change the way in which we all work. The changes brought by the pandemic and the broader challenge of climate change make this debate a very timely one. The topic of tonight's debate is, 'Are we still the lucky country? The future of workplace relations in Australia'.

Our speakers are Michele O'Neil, the ACTU president, Andrew McKellar, the Chief Executive of ACCI, Michael Kaine, the TWU National Secretary, Innes Willox, the Chief Executive of Ai Group, Emma Walsh, the founder and CEO of Parents at Work. David Peetz, Emeritus Professor of employment relations at Griffith University, and Sanuska Mudaliar, the Director of the Red Cross and Red Crescent Global Migration Lab. And the biographies of our speakers are in the background paper, so I don't propose to dwell on those. The background paper also poses some draft questions, which the speakers may address and some background discussion in relation to each of those questions. Each speaker will speak for about three minutes, and that will be followed by a series of questions which I will put directly to the debating panel. I now go to our first speaker, Michele O'Neil.

Michele O'Neil:

Thanks very much Justice Ross and I want to begin by acknowledging the traditional owners of the land I'm on today, I'm here in the land of the Wurundjeri people of the Kulin nation, and I pay my respects to their elders past and present. It always was, and it always will be Aboriginal land. And I also want to thank Professor Ron McCallum for your continuing championing of rights and justice for every worker, and also add my voice to acknowledge the sad passing of Justice Giudice. So, are we still the lucky country?

In coining the term, Donald Horne delivered a backhander to the country that he thought was lazy due to our own dumb luck, and if we are really tested, we might come up short. Well, the COVID pandemic did really test us and the last two years gives us some real time data on which to report on our luck. And I say it was not luck that saved lives and saved our health system. It wasn't luck that protected our frontline workers who kept working in the face of this deadly virus, and it was not luck that delivered a wage subsidy in 2020 that saved thousands of jobs and small businesses. These decisions were made and implemented by government and overwhelmingly supported by the community. When government did not act in the national interest, the union movement campaigned to

deliver the essential safety net that saw us through the worst of this pandemic, 'Äi better pay, JobKeeper, pandemic leave payments to isolate. It was not luck.

Over the past two years, we've seen the best of us, but we've also seen the worst. I'll tell you who was lucky during the pandemic. Australia's billionaires saw their wealth double and corporate profits rose by seventeen point nine per cent. And of course, that isn't just luck. We've put up with lectures about trickle-down economics, and if business is doing well, we're all doing well. The pandemic made it clearer than ever before wealth doesn't trickle down, but up, and during the pandemic, that trickle turned into a torrent. But the signs were there for a long time. Despite Australian workers being more productive than at any time in our history, the share of GDP delivered to workers was at its lowest point in 2019, at forty-seven per cent. That's the lowest annual average since the ABS began reporting this data back in 1959. From a peak labour share of fifty-seven point four per cent in 1975, over one tenth of the economic pie has been taken away from workers. That loss of ten point four per cent of GDP is worth two hundred and eight billion dollars in today's terms, which is actually twenty thousand dollars in lost income for every waged worker. During the same time, corporate profits have grown steadily.

That's billions of dollars of luck delivered to business and employers. Luck delivered by successful liberal governments to business by the weakening of our laws and attacks on workers' rights. And I'll tell you whose luck really ran out during the pandemic. The increasing numbers of insecure workers. We saw the terrible impact of insecure work. They were the first workers to lose their jobs and in industries that suffered the greatest impact. Workers with no sick leave, no holiday pay, no entitlements to see them through. Insecure work proved precarious, not only to those workers, but it's where the virus hit and spread, when workers couldn't afford to take a shift off if they were sick and were often forced to work multiple jobs. And this isn't unlucky, it's unfairness by design and as insecure work increases, Australia's luck, if we have any, will run out because job insecurity is bad for workers, for the nation and for our economy. And, of course, this year we saw thousands of women marching for equality, again. Their luck still sees the earning fourteen point two per cent less than men and unchecked sexual harassment at work. Are we still the lucky country? That's not the right question. As we stand today, we have 700,000 people unemployed, 1.3 million underemployed, and a million people wanting to work but not looking. Are we a fair country that cares for all its people? That's a better question, and one that needs an urgent answer before it becomes redundant. Thank you.

Justice Iain Ross:

Thank you very much, Michele. We'll now go to Andrew McKellar, the Chief Executive of ACCI.

Andrew McKellar:

Well, thank you Justice Ross and to Professor McCallum and to distinguished colleagues. Thank you for the opportunity to appear this evening. In October, ACCI launched a major policy initiative called Better Australia. In that, we are challenging Australia to grapple with the decisions that we need to make to secure the country's future and to secure the country that we want in 10, 20 and 30 years. In that, ACCI advances five visions for Australia a smarter Australia, a fairer Australia, a bigger Australia, a sustainable Australia and a resilient and secure Australia. Our work on Better Australia convinces us that countries make their own luck through smart decisions, through sound policy, through hard work and through understanding the challenges they face and having the courage to tackle them. It's when policy makers are complacent, when politics is allowed to paralyse necessary change and when discussion stops looking to the future and reruns the debates of the past, that countries need to fall back on their luck.

As part of our work towards a better Australia, ACCI is looking at how we stack up against their peers in the OECD. On most measures, we are distinctly middle of the road. Our employment rate, bettered OECD averages pre-COVID, but we were beaten by countries like New Zealand and the UK. We are not more equal. Our incidence of low pay is no better than the average, despite one of the world's highest minimum wages and higher award rates above that. Using the Gini coefficient measuring inequality, we ranked 23rd out of 37 OECD economies. Our poverty rate's better than the US and Canada, but we are beaten by countries like Ireland, France and Switzerland. We are not more productive or competitive and our productivity growth has been parlous, particularly over the last decade. Just today, we see in the Global Prosperity Index report that the material health of our country has slipped from first to sixteenth, lower than our GDP ranking.

Industrial relations is only one cog in our wider national machine, but the question must be asked, if the current rules are not helping make Australia fairer or more productive or generating more jobs, are we on the right track? So, what should we do in IR? My members would tell me that we need to better support businesses being more productive, competitive, agile, better equipped to win in the global recovery against competing nations and better equipped to pay higher wages. Cut the costs of using the system and reduce the risks created by burgeoning legislation, the size of a telephone book. Increase employer confidence to use the system as intended, to take risks, to invest, to do business

and to hire. Just above all, make our obligations and processes simpler and more consistent. There are some simple questions all of us should consider. Does industrial relations have to be as hard as we are making it in Australia? Why should the regulation of work be more complicated here than in other OECD nations? What are we achieving and for whom by such a complicated approach to regulation?

Coming out of the pandemic, more than ever, we need to make sound, smart decisions that respond to real problems, not focus group tested slogans or short-term political opportunities. And we're going to need to do a lot better than we did in the past. My network remains desperately disappointed, and that's putting it politely, that the full package of reasonable and measured IR changes could not proceed through the parliament earlier this year. We remain disappointed that scare campaigning and pressure on the Senate crossbench replaced constructive discussion and compromise. If we can't do better than we did during the course of this year as an industrial relations policy community, we let down not just those we represent, but all Australians, particularly our young people. We will damage our country if we re-centralise industrial relations to the industry or national level because we lack the courage and smarts to make enterprise bargaining work.

We will attempt to damage our country if strikes and disputation inflicting deliberate damage on the Australian community again become the norm as we are seeing in our port and transport industries currently. And we will damage our country if we continue to allow negotiations to focus, not on wages, conditions and productivity, but on those seeking to control who we do business with, who we contract with, who we can hire, how we organise work and how we can structure our operations for the future. Thank you.

Justice Iain Ross:

Thank you, Andrew. I'll now call on Michael Kaine.

Michael Kaine:

Yes, thank you very much, Judge. I acknowledge and pay respect to the traditional owners of land from which I present, the Cabragal clan of the Dharug nation. Well, after striking trucking supply chains for the last three months, this might sound a bit cute, but we actually want to defend the role of employers, Andrew, because the real conflict emerging in the economy is not between workers on one side and employers like Toll, Linfox FedEx on the other. It's between transport, employers, workers and their unions on one side and Amazon and Uber on the other. The humans on both sides

of the traditional negotiating table need to realise that they are haunted by a common enemy – Silicon Valley. Traditional employers are moderating influences in our system. They trade loyalty and hours for steady income, duty of care and find a relationship with their workforce. They need relationships with suppliers, contractors, industry stakeholders, regulators and workers to prosper.

That moderating influence is part of the innate power balance embedded in the theory of our system. And for much of our industrial history, that theoretical balance has found a reasonable practical expression. Part of the lucky country, if you like, but no more. Uber, Amazon and their ilk are starkly different. They don't defy our industrial structure so much is completely bypass it. They've been built to ignore human concerns entirely and operate without even a nod to challenges like injury, sexual assault or living wage. The problem is not that traditional employers are being squeezed out. It's that they're not even contemplated by these outlaw operations. These operations bypass employers altogether. Our system was not built for this challenge and our companies can't compete because these behemoths are not competing at all. They're bypassing. The work's the same. From time immemorial people have been engaged to transport things from A to B, but gig behemoths are doing something fundamentally different, stripping away every work characteristic except the direct means of accessing that work, which with new technology requires an employer not at all. And our traditional companies are panicking. Panic slashing rights to work, and that's ultimately self-defeating.

It's like forcing a boxer into the ring with a saltwater crocodile. One observes the established laws, while the other has no interest or capacity to even understand them. The crocodile is going to eat the boxer whole, and the next stage consequences can be seen right now. Look at the exploited migrants. We've had seven people die in the last two years in food delivery. Burak Dogan was lying dead and Uber was still sending him work requests. They didn't even know that he had lost his life. Well, the time's come Chair for some newfound honesty in this discussion.

Workers and unions need to acknowledge that entrepreneurial workers have always been with us. At the TWU, we represent 15,000 small business owner drivers, and that's taught us that the concept of reliance needs to be the touchstone of rights and obligations, not archaic artificial legal categories that encourage the futile mission of trying to shoehorn all work into the employment relationship. If we continue down that path, we will fail, and the gig economy shows us that. So, in conclusion, I'll say this. Workers and unions need to be honest about that, and employers need to acknowledge that unless such work is brought within the protection of industrial laws, then they are dead. Through the prism of the innate balance that our lucky country system brought us. Workers and unions are natural

allies with traditional employers. We need to start behaving like allies and jointly take our case for urgent reform to the halls of Parliament. Thanks, Judge.

Justice Iain Ross:

Thanks very much, Michael. And now to Innes Willox.

Innes Willox:

Thank you, Justice Ross. I'd just like to acknowledge Ron McCallum for your wonderful career, but I'd also like to acknowledge the contribution of Justice Geoff Giudice, who as Iain mentioned, passed away today, was a real lion when it comes to industrial relations in Australia and a very sad loss. Thank you for today's debates and to all participants in today's debate. As has been pointed out, Donald Horne was being more than ironic when he described Australia as the lucky country. If you read the rest of the quote, it goes on to talk about our second-rate leadership being lucky to have the resources at the disposal that we do have. We are though lucky. We are a cohesive society, we are a relatively equal society. The Productivity Commission, in a recent report, found that inequality in Australia had not shifted and was very favourably comparable to other competing nations over the past 30 years. We've seen our cohesion work to our advantage as we work through the pandemic. The greatest economic upheaval for almost a century and we have stuck together and we've come through to the other side but we still have a lot more work to do, and the reason we have a lot more work to do is that the pandemic has fundamentally changed the way that Australia works and indeed the world works.

There's no going back on many of the changes wrought by the pandemic. Just think of a couple of issues that the pandemic has brought to the fore and perhaps changed forever. Workplaces and workforces will never be the same again. It's hard to imagine people choosing to go back to an office five days a week if they have the opportunity for hybrid work or more flexibility in their work. It's difficult to see how our trading system changes, how our migration settings go back to exactly what they were. The pandemic has fundamentally changed a lot around what Australia is and how Australia operates. We need workplace laws and an award system that fundamentally recognises that the recent acceleration in digital technologies has occurred and is continuing to grow apace. And we need to acknowledge that the future of work has been brought forward by several years by the pandemic. The future is perhaps with us now. It's very difficult to see how people who can work at home or remotely will choose to do anything other than that. That is an employee's choice of flexibility at play here. Skill and labour shortages mean that businesses who do not offer flexible work to their

employees and allow them to work remotely will find it increasingly hard to attract and to retain quality staff.

The workplace relations system and awards have not kept up, perhaps understandably, with the fast pace of change, and this needs to be addressed quickly as we emerge perhaps to a new normal, living with COVID, scenario. When working from home, there is no reason why an employee needs to work their hours between 9am and 5pm. If it suits the employee to get up early in the morning and do their work, then, and they're happy to do so, and the employer is happy to accommodate this, that's the way of the future of work. Also, why is it necessary for work to be done over continuous hours if people are working from home? Why should there be a designated one-hour meal break in the middle of the day at a time when people are choosing their own flexibility by working from home? The system has been based on assumptions and about costs and inconvenience of travelling to work, something that many people will not do again from now on in.

We are the only country in the world with an award system and the system, if it is to be retained, needs to be a lot more flexible. Australia just can't afford to pick up where we left off in 2020. You might remember we're all talking then about the need for greater wage increases and sustainable wage increases. We can't go back to where we were. We've got to find ways to boost productivity and boost living standards for all that fit in with the new world that we are living in. Ron mentioned the workplace, the enterprise bargaining system, as one area that needs fundamental work. And indeed it does to keep it relevant to the 21st century economy. The system needs to be now more than ever focussed on the needs of employers and their employees at the enterprise level. We do need safeguards. But the current high level of regulation often stifles the flexibility for both employers and employees. So, yeah, Australia is a lucky country. No doubt about it. But that luck is not guaranteed. The workplace relations system is a core component, not the only one of us continuing to ride on our luck in the years ahead. We need to adapt and change and be prepared to be flexible about how we do that to gain the best of the opportunities that lie ahead. Thanks Iain.

Justice Iain Ross:

Thanks, Innes, we'll now go to Emma.

Emma Walsh:

Thanks for having me tonight for such an important debate. I'm Emma Walsh and the CEO of Parents at Work. I'm a female small business owner, I'm a mum, I'm a passionate advocate and campaigner

for family friendly workplaces. I'm joining you here from Gamaragal land in northern Sydney, and I pay my respects to the traditional owners. So, as we've heard, we're undergoing a seismic shift around our patterns of work like never before, as Innes has shared, the reality is that the future of work has actually already abruptly arrived, and I think it's far more fluid and flexible than any of us could have predicted. And while Australia appears to have weathered the storm and been luckier than some, there's certainly no doubt universally every individual's work life has been impacted, and it's really forcing a serious rethink on how we do things. Thanks to technology, obviously, the traditional nine to five work model is declining, as we've heard, and there's an expectation that work can and will be performed anytime, anywhere and effectively. that makes us all gig workers of a kind. And the challenge is, though, if there is an expectation for that that we are always on and home life is expected to somehow fit around work. And as a result, I think there is a work life revolution that's under way that we have to heed.

One of the most profound impacts has been that of our caring economy. Many Australians now see caring roles as vital, they're essential services for our community to function, and arguably COVID has reminded us that caring, in fact, is at the heart of our economy. And if caring is at the heart of our economy, then it's everyone's business. But for too long, workers' caring and family commitments have not been seen as a business imperative. We know caring is undervalued, seen as an unpaid charitable duty, mainly performed by women as we know and the ripple effect this has on workplace participation, gender equality, financial health outcomes, is both pervasive and disturbing, not only for women, but for the health and development of the next generation, our children. And this is not acceptable, and we must do better. As Australians age, the caring economy is growing, and we are facing a caring crisis as we emerge and redesign jobs of the future. This is a watershed moment for us, and if you think it doesn't affect you, think again. Because regardless of gender and regardless of whether we're parents or not, every single one of us belongs to a family. However, we define that, that needs and deserves our time. So, it's in everyone's interest that we solve this.

Undeniably, we must evolve our IR framework to be match fit when it comes to the provision of care policies and conditions of work. And as it stands, Australia's current scorecard isn't nearly good enough. We know childcare support and access to paid parental leave in Australia remains below the standards of comparable countries. You must be lucky to be employed with an organisation who offers good work and family policy benefits, and the divide between those employees that have access to good family policy and those that don't only widens every year. Australia needs a national work and family policy framework. We urgently need government to take the lead on working in

unison with business, unions and community groups to set a new vision for how we design, fund and embrace family friendly policies as a nation.

As part of this, we absolutely need a plan to support young people's mental health and education to recover from the pandemic. To conclude, I'll share this. Parents at work and UNICEF Australia have joined forces to put forward a set of national work and family standards, as we heard. We hope that this is a step in the right direction, and we look to industry and government to recognise, in fact, these standards by publicly endorsing them and working together to seek new ways to implement them in workplaces. Thank you.

Justice Iain Ross:

Thank you, Emma, and will now go to Sanushka.

Sanushka Mudaliar:

Thank you to the AIER and Professor McCallum, and I acknowledge and pay my respects to the Gadigal people of the Eora nation, on whose country I'm speaking and to their elders past, present and emerging. I'm going to focus my comments on the failure of our workplace relations system to adequately protect vulnerable workers, specifically, the growing number of low wage temporary workers, such as international students, working holiday makers and those arriving under the Pacific Australia Labour Mobility Scheme. We rely on these workers for cheap food in supermarkets, affordable dining, clean offices and shopping centres but there's no debate as to the inadequacy of our workplace relations system when it comes to their protection as we've already heard in the debate today.

On paper, the Fair Work Act applies equally to citizens and non-citizens, but migrant workers' access to its protections are inhibited by long standing immigration laws and policies, and by our failure to recognise that the problem is not a few bad apple employers, but a systemic issue. I'm speaking tonight entirely in my capacity as an Executive Committee member of the AIER, but in my other role as Director of the new Red Cross Red Crescent Global Migration Lab, I can see that the human cost of labour migration policies are very real and increasingly require a humanitarian response. Protectionist visa restrictions, such as limitations on work hours, industry participation and length of employment, and the tying of work visas to individual employers, create an imbalance of power between employers and workers. They also have the perverse effect of entrenching poor working conditions in wages and certain industries and jobs that are now dominated by migrant workers.

These restrictions discourage workers from reporting exploitation, and no amount of worker rights education will overcome this problem.

To ensure migrant workers are protected, we need to acknowledge and address the interaction between immigration policy and the workplace relations system. We need a firewall between the Fair Work Ombudsman and the Department of Home Affairs. We need a specialised service within the Fair Work Ombudsman request line for migrant workers and help lines that are independent of government. We need a proactive approach to enforcement that involves all government departments involved in temporary labour migration, programming and their contractors. I'd refer you all to the work of Associate Professors Laurie Berg and Bassina Farbenblum from the Migrant Worker Justice Initiative for some further recommendations on this area, including the global study of effective strategies to prevent wage theft from migrant workers. That's due to be published on the 7th of December. If we're going to build back better after the pandemic, we need to start reimagining the IR system from the ground up in a way that incorporates all groups left out under the current system, including casual workers, gig workers, independent contractors and women.

The AIER is involved in this with our A New Workplace Relations Architecture project, and we have a book coming out next year setting out a broad vision for reform. We have a structural problem of inequality in our labour market, and we need to use the opportunity we have in the aftermath of COVID rather than rushing to create new temporary visa categories like the ASEAN Ag visa. Thank you.

Justice Iain Ross:

Thank you, Sanushka. And we'll now finally go to David Peetz, our last speaker.

David Peetz:

Thank you, Justice Ross. And I'd like to pay my respects to the Turrbal people from whose land I'm speaking this evening, and also to the memory of Jeffrey Giudice, about whom you've heard quite a bit today. Very sad development. On the topic tonight, I think that if we're going to take the question of the future of work relations seriously, then that requires some serious thinking about institutions, and lots get said about changing the laws and the like. But I'm going to focus on institutions and there are three main points I'm going to make. The first is that we need to think about an institutional structure that allows some high-level decisions about the minimum standards that people should be entitled to, to then be applied at a lower level.

Your access to protection shouldn't depend on whether you're defined by some workplace document as an employee or a casual contractor or whatever. And there's a lot of effort, probably too much effort, that goes into making sure that people are defined the right way or the wrong way. We need institutions that can define standards in a way that's relevant to people in all sorts of work, and sometimes to experiment with new and better ways of doing things, and you can get some idea of what's involved by looking at how a minimum wage in New York are applied to taxi drivers and Uber drivers in that city. They don't get paid an hourly rate, but a piece rate figure essentially equivalent to the minimum wage or what could help the drivers of trucks in New South Wales through the operation of Chapter six of the Industrial Relations Act. They get access to protections that have quite a lot of similarity to what's in the relevant awards. But they're not employees and nobody's really defining them as employees, but they're getting protections. Well, we need institutions that are designed to account for the specific circumstances that people experience in undertaking work.

My second point is that the higher-level tribunal, to the extent that it will continue to be important for fairness in dispute resolution, well, it needs to be balanced, it needs to be seen to be balanced. Now, notwithstanding the truly heroic efforts of my Chair, there is a widespread perception that the present tribunal is increasingly being, for want of a better word, stacked. We need to rebuild that institution from scratch and to legislate a means of building balance into its composition and into future appointments.

And finally, the institution that's relied on to enforce standards, the Labour Inspectorate, also needs to be rebuilt and its accountability needs to be not to the government of the day, but to a board that is representative of the interests of the vulnerable and potentially exploited workers whom it's meant to protect. In short, we need institutions that meet the needs of workplace relations of the present and the future. Thank you.

Justice Iain Ross:

Thank you very much, David. We'll now go to the open question session for particular members of the panel, and I might start with you, Michele. As Greg Vines mentioned earlier, the pandemic has had a very gendered impact, impacting particularly on women workers. And as you said, we have had a persistent gender pay gap for many years. What changes do you think are required to address those issues? ...I think you're on mute.

Michele O'Neil:

Thanks very much Iain. I wanted to, well, we have a gender pay gap that has in fact worsened in the last 12 months, so it increased five point eight percent to fourteen point two percent and it's over 30 percent if you look at all hours worked. And as you've heard already from a number of the speakers, one of the impacts of COVID was that it didn't treat everybody the same and women's experience of the pandemic has been marked at markedly different from many men, as has been the case in terms of migrant workers, as we've heard from both Sanushka and Michael. When we think about what needs to be done about this, we've got to recognise the interconnectedness between these issues. And when I was talking about insecure work, of course, what we know about casual jobs, insecure jobs, the sectors where the majority of that casual work is are also the sectors where the majority of workers are women. And that's not by chance.

There's a structural relationship here about this. And the other thing that's really clear when we need to try and understand gender inequality is the fundamental undervaluing – as touched on so clearly by Emma – undervaluing of women's work. So that's not just in the unpaid area of work, and we've got one of the most unequal countries in the world in terms of the distribution between unpaid care work and domestic work between women and men, but also, of course, in paid work. So, there's no coincidence that if you look at the pay rates and conditions of workers in early childhood education and care or in aged care, in my mind, two of the most important jobs anyone could ever do, caring for our youngest and our elders, the most vulnerable, that we grossly undervalue the skills involved in that.

So, to get to the answers, I think we do need to look at gender equity in a structural way. I think it should be an object of the Act, that gender equity is expressly in the Fair Work Act as an object. We need to look at the pay equity provisions, have higher equity principles that remove the need for a male comparator. We should be long past a point where we have to argue that to value properly women's work we somehow have to compare it to men's. It should be valued on that on the actual core nature of the work and the importance of it. And of course, that would lead to the re-evaluation of those sectors where the majority of women work that I've that I've mentioned. One of the other things that will make a difference in terms of gender inequality is recognising the different experience that women have at work. So, the respect at work report, the requirement and fifty-five recommendations need to be fully enacted. I mean, this cannot be a pick and choose. This was a comprehensive report about a scourge in terms of violence and harassment at work that mainly affects women, but not only.

So, included in those recommendations from Kate Jenkins was a recommendation to include in the Fair Work Act, an express prohibition on sexual harassment and that needs to be enacted as one of the legislative changes, along with the others that have yet to be put into law. We've seen the weakest legislative response to that report, and that only came 12 months after it had been delivered, and really, when the government was dragged into a response. The other issues overlap. and the last point I want to make here overlaps. No sorry, one more – ten days paid domestic violence leave for every worker. I mean, this interrelationship between violence and harassment at work and at home is something that I think we can't ignore. And so it's literally a lifesaving provision and one in three employers are now delivering it. But your safety, the safety of a woman and her child, should not depend on whether she happens to work for an employer that understands and sees the need for that. It should be a universal entitlement to ten days paid leave.

And then the interconnectedness I want to end with Justice Ross is this issue of insecure work again because unless we structurally deal with creating jobs that women are able to access, where they can rely on those jobs, have a secure income, not have to work two, three or four of them just to make enough to live on and support themselves and a family is fundamental to this, and that includes the gig worker issues that was so well articulated by both Michael and also mentioned by others, the rights to not have never ending contracts. We need to deal with what is common in the rest of the world about a limit to the consecutive contracts that can be done. Control the use of labour hire as a way of undercutting secured jobs and pay. And of course, having a genuine definition of casual and a genuine right to conversion, rather than the weak versions we currently see and in fact, counterproductive versions we currently see in the Act in relation to casuals.

Justice Iain Ross:

Thank you, Michele. I should have mentioned at the beginning that as I go to each of you, if you wish to comment on the contribution of another panellist, please feel free to do so and also try to limit your responses to about the three-minute mark and you'll see the counter on the screen. I want to go next to Andrew McKellar. Andrew, you mentioned ACCI's recent publication Better Australia and in that ACCI identifies what you describe as Australia's future economic prosperity. And one of those goals is about access to safe, productive and rewarding work. And it's suggested in the publication that we would achieve that goal by, amongst other things, overhauling Australia's industrial relations laws. What changes specifically, do you think need to be made to our industrial relations system?

Andrew McKellar:

Well, thank you, Justice Ross. And thank you for putting me on the spot in relation to an industrial relations matter, which I have to say is not my area of expertise, but I am trying to come up the learning curve. But look, I think if I can, if I can answer broadly on this question, then I would say that in terms of the future direction of industrial relations in this country, I think what we would observe is that it needs to evolve in the way in which the nature of business is evolving and it needs to meet that competitive environment if we are going to be able to continue to offer jobs of substance and value and security. So, I mean here, the way that consumption is changing is affecting the way that business is performed. And in turn, of course, that will affect the way in which the future of work evolves. And I don't think, I don't think here that we can put our head in the sand and ignore the fact that the nature of our business is evolving in that way. So, I don't immediately take at face value what Michael said before in the sort of paradigm that he tried to create this picture of sort of everyone on this side and some global behemoths on the other side because, you know, we have to recognise that business needs to compete in that environment, and it needs to innovate, and it will need to adjust the way it delivers services.

If I can draw on an example from my own recent experience, you know, if I think back six or seven years ago when I first went to France, just looking at the taxi services in Paris at the time, you couldn't catch a taxi and pay for the fare with the credit card. You know, there was no way of summoning the taxi. No, no application. The level of technology was very low. You'd get into a taxi. More often than not, they would take the longest possible route. You'd end up paying a lot more. It was basically, it was a very poor service. Uber came into the market and of course, created a disruption in that industry. There were huge protests. You had the taxi companies then going out and protesting and stopping people on the motorway, destroying vehicles, pulling customers out of out of cabs and out of cars that they thought might be Uber cars, limos being driven, et cetera, et cetera. So, I mean, there was great resistance to that sort of change. Roll forward one or two years. And in fact, what you saw was the taxi companies had followed suit and caught up. You had much better service. You had flexibility. You could book a taxi trip with an app.

I think what we've got to be very careful about here is building in an industrial relations system that preserves rigidities in the way in which this sort of change in business model occurs, which prevents people from ultimately getting a better service that they want and value. And you know, the taxi companies now in Paris are very competitive and they offer a better service. And Uber, as you know, faces competition. They don't have the game on their own. So, I think we've got to be prepared to meet that head on and we've got to ensure that our industrial relations system doesn't stop us from

doing that because I think if we are afraid to face that head on, we ultimately we will end up with a poorer outcome. So, I just I think it's just sort of a salutary warning not to try to build in an outcome which doesn't recognise that progress has to be achieved.

Justice Iain Ross:

Well, thank you. Can I go to Emma? Your organisation, as you mentioned, has been instrumental in developing a set of national work and family standards, and those standards include support for flexible work practises to enable employees to combine their work and caring responsibilities. If you were to make one change to the IR system to make workplaces more inclusive and family friendly, what would that change be?

Emma Walsh:

Well, as I said, I think the fact is, we need some work and family standards – a framework. It's hard to believe Australia doesn't actually have a national work and family policy framework, compared to other countries around the world. Of course, as James would know, our Nordic neighbours have really done some brilliant work around this, and work and family are not seen as separate. They're intertwined. And there are conditions made available to see how those can be brought together and work in step with one another. So, I do think we need some standards that actually incentivise and encourage employers to really back creating and embedding a family friendly workplace culture in an organisation. Not just that, developing practises and policies, and really encouraging employees to use them to really see the benefit in that. So, I'm a big believer in if you can help organisations recognise and set a standard and invite them to really aspire to that. Show them what is in fact, where they stand today. Create them and provide them a benchmark for what good looks like. Because I do believe a lot of organisations aren't sure of what right looks like when it comes to family friendly policy then and show them how to get there, then that's going to go a long way. But there is no doubt that we really need government to be doubling down, at least their investment in universal, family friendly workplace policies.

So, as Michele has said, that there is an opportunity for everyone to access great family friendly policy. There are many countries around the world that are really starting to look at what does it mean to be a family friendly nation? They've set out a plan for that. They're addressing not only the issues that I have around work and family conflict, they're addressing the declining birth rate. We don't have any such plan here in Australia. So, because we lack that plan from government, we do really need to think about what does that mean for our workplaces? What is it we can do that can help support it by

creating a framework that works for business and works for the community. I would love to see the business community really work with government, to design – and unions – to design a family friendly policy agenda for Australia and to see how that could be adopted through an IR framework. But as you said, ultimately it is about flexibility that is key. But it is about agreeing some minimum standards that we all subscribe to, really, around caring. If we all see that caring is a vital part of our community, which I think undoubtedly many people now value in a way that they haven't before. So, it's not an easy answer, but I think standards go a long way. We don't have any. We need some.

Justice Iain Ross:

Alright thank you. Innes, can I go to you on the same broad topic? You mentioned that those who've been working remotely and have enjoyed, I don't know if 'enjoyed' is the right word, the period of flexibility and in what the Productivity Commission's described as a forced experiment as a result of the pandemic that they're unlikely to be wanting to flood back to work. That's certainly been the Commission's own experience. A survey of our staff indicates and members that about 80 per cent want to have a balance between coming into work and working at home, perhaps a two to three day, two days, one, three days, the other, etc. Just picking up Emma's point, what changes do you see need to be done in that space, given that the current indications are from today's newspapers that we're likely to see a surge in jobs in the run up to Christmas? The competition for labour, particularly as our borders remain closed and migrant immigration remains uncertain, is likely to force employers to start to look at what they can do to make their workplaces more attractive. Where do you see this debate going?

Innes Willox:

Thanks Iain. And I just I thank you for that question because I think it is a seminal question. I mean, this, we have to remember, is a white-collar issue. I think as others have mentioned, it was the blue-collar workforce who kept turning up to their workplace every day to keep the economy going. But we're not going back to where we were before. I think the notions of returning to an office five days a week are for most highly unlikely. I think surveys show that maybe 20 percent of the workforce, interestingly, the young and new to the workplace and perhaps the older and more traditional, are the ones wanting to stay at the workplace four or five days a week, which is a big bell curve in the middle, who are looking for that flexibility, somewhere around 60 percent, either at home or in the office or remotely, if not at home.

So, this is a fundamental change to the way that we work and the way that we have to think. We're in the midst of now what is termed the great resignation and employers are highly aware of that. You're seeing reports out of the US and Europe of up to 40 per cent of workforces saying that they're considering changing their jobs or have done so already. We're seeing that out of the United States, where turnover rates that were traditionally 10 percent are now 20 percent. As people emerge from the COVID pandemic, either lockdowns or not, but with a new attitude to life, a new approach to life, and where work fits into that, this is going to be part of a big challenge for employers to meet. They're going to have to be more flexible, just as employees are going to have to be more flexible to fit in with the needs of other employees within the workplace. So, this is a fundamental shift, and I touched on Iain around awards and the structure of awards, will they still be fit for purpose as they're currently written?

Now, I think that's going to be a big debate and a big discussion point. Both employers, well, both employees are demanding more flexibility and employers are recognising that. The quandary everyone is grappling with at the moment is how to deliver it and how to deliver it in a productive way to maintain the productivity levels that we need. We've had flatlining productivity for the past decade or so. We talk about people working longer. That came out earlier this week, working from home. Now whether that's by design or choice, that's the next question to ask, but we need to maintain productivity.

So, we're short at the moment about in the country – highest ever level of job advertisements as employers seek to replenish their workforce. We're short of somewhere close to three quarters of a million people with the downturn in migration and the like. These are huge structural challenges to the country that we face. So, we're going to need to think – all business union and government – sit down to work through how do we adapt to this new working arrangement, particularly in the white-collar sectors? And what are the implications of it for wages, for productivity and for resilience within workplaces, mental health and the like, all of those issues? I think this is a big challenge. It's also a big opportunity for the tripartite nature of us, all who are on this call, to get together to nut this out. There's no simple answers, no simple solutions, just a big challenge, but also a big opportunity.

Justice Iain Ross:

Innes, I certainly agree with the proposition that there are no simple answers to the balance and the questions always asked, whose flexibility are we discussing and how do you find the appropriate balance? But I think, as you've indicated, there is an opportunity for social dialogue around these

issues. And as Emma has called for, a broader policy debate around the framework around which we balance work and our other responsibilities. I'm acutely conscious of some of the difficulties in it, having tried last year to move the working from home agenda through the Clerical Award. And I think at that point, the parties weren't ready for that debate, and they wanted to see how it played out in practise, and we did sponsor some research in that space as well. So, for what it's worth, I'd also encourage and support Emma's call and Innes' comments about the need for social dialogue. Well, can we just shift track slightly and can I go back to you, Michael Kaine? And it was touched on in Andrew's answer to the questions as well that you've highlighted some of the challenges of working in a digital economy and whether the current legal categorisation is appropriate to deal with the disruptors in this field. What sort of regulatory response do you think is required to these changes and how would that work? What would its objective be?

Michael Kaine:

Well, thanks, Judge, first, just a little bit of myth busting, I think, because it is a myth that's been perpetuated brilliantly and right across the world that flexibility and fairness in work arrangements that are given out in the gig economy are mutually exclusive. Of course, that's not true. It's never been true. You can have flexible arrangements and fairness at the same time. But I do agree with Andrew on this, that the system has to be much more flexible to deal with the modern ways of giving out work. It's actually the current rigidities of the system that prevent it from protecting many of Andrew's members, because these new ways of giving out work stand completely outside of the system and facilitate a completely different and lower competitive base for those outlaw companies. And that means that current traditional employers are facing an existential threat, and it's not just in transport, we all know that. It's in aged care, it's in health care, it's right across the economy. We're seeing the emergence of this new way of giving out work. And so the system itself has to be more flexible so that it can support employers.

We want to see employers supported. I mentioned they have traditionally been some of the most important moderators in the work relationship. They are integral to that working in a seamless way. And we're in danger of losing them. And if we lose them, we lose the heart of the entire system so it can't be right, for example, Judge, that if you're an employee, you get all the rights and protections that have been built up over all of the decades. But if you fall just on the other side of the independent contractor employee line, you get none of them. Work exists on a spectrum, always has, right up the dependent side, you've got the employment relationship, right down the other side, you've got

independent contractors who call their own shots. They might be a doctor, they might be a suburban plumber and in between you've got a spectrum of dependency.

So, we need a system that's flexible enough to inquire into the sets of work protections and obligations by reference to the extent of the dependency that workers have on the entity that engaged them. And that might mean that they get employment standards. It might mean they don't get any standard at all because they're truly independent. What it might mean, they get something else, and this will support traditional employers because it'll make sure that this new way of giving out work is brought back into the system, so it supports existing employers. It'll support workers clearly, and it'll also support these new companies that Andrew mentioned that we've become so dependent on in in our economy, because if they crave anything above anything, it's certainty. And I'll give you one example as I finish.

We won an unfair dismissal case against Foodora in 2017. Joshua Kluger was found to be an employee by the Fair Work Commission, and the response of Foodora was that's too much for our model. We're going to leave the country. Now, we don't want them to leave the country. We want them to have certainty. And this notion that all we can do to protect workers and employers is to run the blunt instruments of a 200-year-old, archaic legal test. That's not where we need to be in this country. We need to have something much more sophisticated, something much more flexible to be able to deal with it. Thanks, Judge.

Justice Iain Ross:

Thankyou Michael. Look, I think from the comments of Andrew and Innes, I think there's a broad measure of agreement that flexibility needs to be provided with fairness. The devil, of course, is always in the detail, and I think they would probably support your call for certainty. It's a question of how that legal certainty is created. I'll come to David Peetz shortly about the issue of a flexible response that you've mentioned, Michael, and what that means for institutional arrangements. But I wanted to go to Sanushka now because you would have heard Innes talking about the disruption to labour migration to Australia. The pandemic has largely halted that migration. And now as we look to reset and open our international borders, it's timely to reflect on whether the existing protections provided to migrant workers are adequate and if not, what more needs to be done. You mentioned a number of things in your earlier presentation, a number of deficiencies in the current arrangements. Can I put a similar question to you that I put to Emma earlier? If you had one thing that you wanted to

change to address some of those concerns, if you had the magic legislative wand, what would that be? What would you do?

Sanushka Mudaliar:

Well, that's a very hard question to answer in the context of the complexities of the ways in which immigration law impacts on industrial relations, but I will try to answer. I think the one thing I'd do is improve the way that the Fair Work Ombudsman works so that it is more responsive to the particular needs of migrant workers. So, when we look at the way Australia's industrial relations system operates, it's certainly more advanced than many other countries in the world when it comes to temporary migrant workers because we do provide equality of treatment in terms of labour protections. What we don't provide is equality of treatment in terms of social protection, which is something that Greg mentioned in his opening speech. And that's something that I think we saw during the COVID pandemic has a fundamental impact on the community. The research shows that migrant workers aren't going to the Fair Work Ombudsman because those of them who have end up not receiving the response, not receiving a response or meaningful help that assists with resolving the complaints they have in a workplace. We see migrant workers who have difficulties demonstrating their claims of exploitation, certainly in the context of the time limits that are placed on if you lose your job and you're a certain category of migrant worker, then you have to leave the country within a period of time.

So, because of that, I think there needs to be a much more reflexive system because we have seen investments in the Fair Work Ombudsman to try and deal with these problems. There have been successive enquiries, there's been more resources placed and there is a unit within the Fair Work Ombudsman, which is attempting to address this problem, yet when a worker calls the helpline, they are often told, oh, we need to go and check what the situation is, so, having a responsive system within the Fair Work Ombudsman, and also having a relationship between the Fair Work Ombudsman and an independent entity because certainly in my work with the seasonal worker programmes in Australia, Pacific workers are not willing to call the official helpline, the one that's run by the contractor that runs the seasonal worker programme on behalf of the Department of Education or the one for the Fair Work Ombudsman, especially in a context where the Australian government's response to the high rates of absconding Pacific workers is to start running these campaigns overseas about bringing shame on your family if you abscond and particularly creating a situation where you or your families and communities may not be able to get entry to Australia.

So, we need a response that actually talks to migrant workers and looks at their perspective, why it is that in the context of the structure of the temporary work systems that we have in place, international students and Pacific island workers, in particular, are not using the systems that are available and then we need to make sure that the systems are responsive. So, I think it's about a tailored strategy within the Fair Work Ombudsman that is comprehensive in the way it approaches these issues, rather than looking at individual enforcement issues and something that's proactive, something that's about looking at the systemic problems that we see in relation to this workforce and doing something about it.

Justice Iain Ross:

Okay, thank you. David Peetz, can I go to you about – to touch on some of the issues that have been the subject of the responses we've heard? How would you make institutions more flexible to deal with, whether it's issues of migrant worker exploitation, issues about how we engage with the gig economy, how we deal with the balance between flexibility and fairness? Well, I think you think about what are the – instead of saying we have a tribunal and it's able to deal with these particular types of people on these particular issues, we should instead say, Okay, well, what are the broad standards that we want to apply across the society and these can basically be determined by a tribunal and then, what are the institutions that we need at the local level, the sectoral level, the industry level, whatever, to apply those in areas where it's not so obvious how are you going to do it?

So, like in New York, for example, they had a \$15 an hour minimum wage, which is pretty high by U.S. standards. And you had all these – Uber coming into New York. Basically, the value of the taxi medallions, the term they use, the taxi licence, taxi licences plummeted and of course, total disruption a bit like what Andrew was referring to in Paris. But, you know, without the burnings or whatever, in New York. So what – so there's issues about the earnings of the taxi drivers. There's issues about the lower earnings of the Uber and Lyft drivers and so on. A lot of controversy about, you know, the equity aspect of this. So, the government sets up a commission that undertakes an enquiry into, OK, what are we going to do for minimum standards for taxi drivers, Uber drivers and the like in New York?

They get a whole lot of research done. Basically, they, you know, they find out how long does an Uber driver spend driving somebody from A to B? And how long will they spend sitting in a queue while driving around the block waiting for somebody to turn up? So, they work out basically the down time and the drive time. The income earning time from this research, use this basically to calculate what's the – for a given payment structure, what after all the costs, are the average incomes of the Uber

drivers and taxi drivers, what do we need to make it to turn it into something equivalent of \$15 an hour? So, the minimum rates that are set for Uber drivers and taxi drivers, like in New York, they're not an hourly rate. It couldn't be. How could you set a minimum hourly rate for taxi drivers? They set a minimum piece rate for them, a per kilometre rate, a minimum flag fall that basically works out equivalent to what a minimum wage would be if it applied to them in terms of the income that they get.

Now that's the sort of – that's a fairly interesting institutional experiment with applying a broad state-wide standard to a particular group, a group of particular interests. And so I think what I call directed devolution, you basically have a two-tier structure of institutions, in effect, the top-level institution, like the Fair Work Commission or whatever comes after it or whatever, sets the broad level standards. And then you might have you might have a branch of the Fair Work Commission. You might have a separate institution, whatever it is, working out how to apply this in particular contexts, taking evidence from various people that set out the information. So, it's a variant on a different model to what's used in New South Wales, which I mentioned – Chapter six of the IR Act. There it's basically the New South Wales Commission does it at the peak level and it does it at a micro level too. The commission – a part of the Commission hears evidence about the earnings of owner drivers, the expenses they face and so on. And it comes out with these contract determinations that basically set for basically for self-employed people.

The other drivers don't want to be employees. They'd want to be self-employed, most of them, but it sets out what's the minimum that these people should be receiving from the bigger companies that are using them most of the time anyway. So, it's applying some innovative thinking to the design of institutions to work out how you can apply standards across a broader, across a broad group of society, by looking at individual groups specific to their circumstances.

Justice Iain Ross:

Alright, thank you, David. I found you your observation about whatever comes after the Fair Work Commission mildly disturbing. But I think the point that we can learn from how other jurisdictions deal with these things is well made, I think. We are certainly not the only country in the world trying to deal with issues of migrant labour exploitation or trying to balance work and family responsibilities or trying to find the right balance between flexibility and fairness and all of those issues are ripe for further social dialogue amongst the parties. Look, I'm conscious of the time, I'm also conscious that Greg Vines and Tony Burke have been patiently listening to each of the observations that you've all made. So, before I go to Ron McCallum, I wanted to give Greg and Tony, if they wished, an opportunity to

make a short comment on any of the observations that have been made. Perhaps Greg, you first, if you like.

Greg Vines:

Okay, thanks very much, and thanks for the opportunity of listening to the debate, it's not often I get this chance to hear the Australian perspective so up close. But look, it is a really, really interesting discussion. And certainly, the questions around labour migration are ones that are a really troubling us globally, massive problems in some countries around labour migration. Also, of course, one of the issues that hasn't been raised today but was a real telling point through the crisis was the situation of seafarers. At one stage, we had nearly half a million seafarers who had been stuck on ships. They weren't allowed to leave the ships at port for 11, 12, 18 months. You know, we're slowly getting those people repatriated, but the sort of suffering out there has just been extraordinary. Can I also just make a comment around, there's been a number of references to Uber and the like, all these other platform economies.

Now I'm certainly not, not in any sense, decreasing the seriousness of the issue for those ones, but I'm also really concerned about the gig economy workers who don't fit that profile, who are working in the shadows. You know, all of these online sites now where people are bidding each other down to do work for two or three or four dollars an hour. And it's that area, that hidden part of the gig economy that I think really is going to need attention as well. And it needs some global standards around this. There's no question about that at all. And then the other point, which I'm surprised hasn't really come out in the discussion, is around climate change. You know, the impact on jobs from climate. Huge opportunities, I believe, that the new forms of jobs that might become available, but also huge opportunities for development outside the urban areas, you know, to get some better jobs, to get some better quality jobs out into regional areas of countries like Australia and indeed into many countries around the world. All of this, of course, depending on equality of access to technology and the connectivity and the like as well. And then just finally, the question about what these new forms these new norms of work are going to be. And certainly globally, there's that there's this similar sort of statistics that are showing people that have enjoyed for want of a better word, the opportunity to mix work and work at home. But there's also major challenges that presents when home becomes the workplace and the issues around violence and harassment at work, when that's transported into the home. And that blurring between domestic violence and work-related violence becomes a real challenging issue as well. But of course, and one of the speakers picked it up, when we're talking

about this capacity for remote work and remote working from home, that's a relatively small part of the working population.

The blue-collar workers, the trade workers, the service providers, a lot of them simply don't get this luxury as well. And we've just got to be careful that we don't set up a solution that's nice and favourable for those who can work from home and provide these family friendly policies and this greater flexibility, and we forget about the vast majority of the workforce. And then the final comment and this relates less so to Australia than other countries. But keep in mind that globally, 60 per cent of the world's workers are in the informal economy, completely unregulated. No social protection, no legislative protection, no labour inspection. None of these issues, which so many workers and in Australia, I think to a large degree, is taken for granted. And we've just got to guard it, in countries like Australia, that we don't allow this increase in the informal economy, this complete deregulation, maximum flexibility, but minimum fairness. So, there are massive challenges around. So, I'll go back to my original comments, and I'm pleased that both from the unions and the employers today the recognition of the value of social dialogue. It's a buzz word, but it is the way we're going to solve these problems, that we need to get unions, workers and governments leaving their baggage out of the room and coming in and trying to find solutions to this.

You know, we've heard today there's probably 90 per cent common ground between everyone who's spoken, 10 per cent difference. Let's build that common ground up and find some, good solid solutions to this, so look, thanks for the opportunity to listen in. I've really enjoyed it. Thank you.

Justice Iain Ross:

Thank you, Greg. I think as Innes mentioned, there are challenging issues. There's an agreement about the broad and desirability of facilitating flexibility with fairness. But it's how you manage that, and I think you can only explore that issue through further dialogue. Tony Burke, any final comments from you before I go to Ron.

Tony Burke:

Yeah, thanks Iain. And I was expecting the opportunity, so I'm very grateful for it. I was just staying as a spectator.

Justice Iain Ross:

Well, I started to feel guilty that you and Greg might be the only spectators left. So—

Tony Burke:

I was raised on Catholic guilt, so I'm on for it. That's fine. There's two different debates, one which I think is legitimate and we want to be able to have. And the other debate, which I think is in fact the biggest issue we're facing right now. The legitimate debate, that we should always be having, is where should the safety net be, industry by industry? What should the rostering rules safety net be? What should the minimum standards be? What should the minimum rates of pay at different times of day be? That's a completely legitimate point of contention for the tripartite system to work its way through. With the rise of insecure work, there is a different debate going on now, which I think is absolutely paramount that this either ends one way or the safety net is gone. And it's whether we should in fact have a safety net.

Well, the gig economy has opened up and I was pleased with the comment from Greg about the breadth of the gig economy. We're not just talking about Uber, for example, a large part of the NDIS is now delivered through the gig economy. There's a whole lot of sectors that are delivered through the gig economy now. And here's the thing, if we now have workers where there is a complete race to the bottom. Then this is a situation where the safety net does not, in fact, exist.

If you had workers where effectively they are on endless back-to-back short term contracts, which means they are forever on a probationary period, then, for them, a whole lot of aspects of the safety net do not in fact exist. If you get an enterprise agreement at a workplace and yet it is possible for the business to then just go to a labour hire company or outsourcing and completely undercut everything that was just negotiated as the minimum standards for that site, then we don't have a safety net. And that part of the argument, I think, is one where there is not a consensus. But unless it resolves in favour, of us finding a way of providing the safety net where people who want secure work can get it, and that minimum standards, once set, can't be subverted, we end up in a situation where the safety net just doesn't exist, to me, and fundamentally change what it is to work in Australia.

Similarly, with Sanushka's examples with respect to Visa workers. If the employer has the capacity not simply to terminate your employment but to terminate your visa, then once you're on the hook for deciding whether or not you will complain about something, effectively, the rights and standards you are meant to have become realistically in the real world, unenforceable for you because the normal power imbalance is at a rate of knots, different. So, I think out of the different arguments that have been put tonight, which has just been a really healthy, good debate, the natural tensions about where the safety net should lie shows the strength of the tripartite system going forward – the tripartite system

going forward – but the secure work issues, in fact, determine whether or not the safety net is there for at all for a growing section of the Australian workforce. And unless we resolve that in favour of forms of security with these emerging forms of work, then a whole lot of what's been established in Australia as minimum standards for more than a century – it's not at risk – for a whole lot of workers, day by day, it's gone.

Justice Iain Ross:

Alright, thank you Tony Burke. I think, as I said at the beginning, the pandemic and the challenges of climate change provide a unique opportunity for some reflections on the current system and how it is adapting and whether it needs to adapt further to the changes in the way work is being performed. I now go to Ron McCallum and ask for Ron's reflections and closing remarks.

Ron McCallum:

Thank you, Judge Iain. And May I begin by thanking Michael Harmer and Harmers' workplace lawyers and the Australian Institute of Employment Rights for sponsoring this debate. I'm honoured to have it named after me or for me because I've always believed throughout my life in the power of reasoned discussion. That's why I became a teacher and why I've done a number of government enquiries. And what I've seen today has been a higher level of a consensus than I expected. There seems to be consensus on all parties, including civil society, that the pandemic has caused a crisis that's made us a more unequal society. Some have benefited. Some have not. It's also very clear that women and families are not getting the proper end of the stick compared to many other countries. It's also clear I think everyone tends to agree that our labour relations laws are far too complex and do not help. Let me say that I'm still disappointed that many of the provisions of the 2021 one Bill, which both trades, unions and employers agreed to, were withdrawn.

I think it shows the limitations of the political process in our country. I don't think we have the political tools at the moment to go ahead. I would like to see broader discussion by trade unions, employers, migrants, women, women's groups, disabled groups and civil society, to think about how we can make society fairer. We have the tools, just briefly – our Robens safety laws and our discrimination laws do not deal in categories of employees etc., and employers. They deal with businesses and undertakings and all those who work in them. And that's where we should be attempting to move our labour laws and the Institute of Employment Rights, Australian Employment Rights, is writing a book, a number of us are contributing, on the architecture of the employment, looking at ways in which we

can move our industrial laws forward via discussion to make this a better society for our children and grandchildren. Thank you. I think it's now our executive officer, James Fleming.

James Fleming:

Thank you, Ron, and thank you to all of our participants and to our Chair, Justice Iain Ross. That's it for us tonight. Please check out the Work Matters podcast for some more stimulating ideas on industrial relations topics. You can also check out the National Industrial Relations Calendar on our website for upcoming events around the country. And, of course, subscribe to our newsletter to stay informed. Good night all and see you next year.

END.

30 November 2021.