

Now or Never – A Fair and Productive Workplace?

A Contribution

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Abstract

The relationship between employment law regulation (unfair dismissal laws and wage setting) and productivity is deeply contested between unions and employer groups. However, this contribution argues that other areas of workplace regulation can increase productivity, while costing little. These include reducing sex and race discrimination in workplaces, and providing where possible, working from home entitlements to employees. This contribution, based on a speech prepared for the AIER Ron McCallum debate 2025, focuses on this tension and possible resolutions.

Key words

Productivity; fairness; sex and race discrimination; WFH; definitions of productivity.

Introduction

Can we achieve Australian workplaces that are both fairer and more productive? Productivity we can define as the “output of goods and services arising from the combination of inputs including capital, land

and unidentified sources, and the technology by which they are combined”.^{1,2} Fairness is even more contested but would seem at a minimum to include workplace procedural fairness irrespective of a person’s attributes. Productivity and fairness may be in conflict as workplace law aspirations, suggesting potential trade-offs. It is this tension that the *Fair Work Act* seeks to navigate.³

Research by e61 and some business groups sometimes views increased wages through awards and stricter unfair dismissal laws, as regulatory burdens that might impact workplace productivity.⁴ Some were critical of the *Secure Jobs Better Pay* reforms to the *Fair Work Act*. At the same time, these interventions in the labour market address wage inequity and protect workers from unfair losses, thereby centrally tackling forms of fairness. An additional view is that “unfairness” is a form of market failure that may also decrease productivity, as is argued in the AIER treatise “*A New Work Relations Architecture*”⁵ that you can collect at the conclusion of this Debate. But enough product placement for AIER!

¹ Harvey, K. and McKenzie, M. (2025) ‘Productivity, Pay Rates and Power’, *Journal of Work and Ideas*, 2025(2), p. 2. Australian Institute of Employment Rights (AIER)..

² In addition, the Productivity Commission of Australia’s definition of productivity growth: ‘In the words of the Productivity Commission, productivity growth ‘is the process by which people get more from less: more and better products to meet human needs produced with fewer hours of work and fewer resources’: Productivity Commission, *Advancing Prosperity: Five-year Productivity Inquiry Report* (Report, 2023) vol 1, 1.

³ The history of the *Fair Work Act* reflects this tradition, with ongoing attempts by governments to find balance (or ‘fairness’) between productivity and workers’ rights, individual and collective flexibility, and the needs of employers and employees. A detailed recent history of the workplace relations settings that led to the Labor government’s introduction of the *Fair Work Act* in 2009 is set out in M Bray and A Stewart, ‘What is Distinctive about the Fair Work Regime?’ (2013) 26(1) *Australian Journal of Labour Law* 21, cited in M Bray and A Stewart, *Secure Jobs Better Pay Review Report* (Report, Department of Employment and Workplace Relations, March 2025) 11.

⁴ Brey and Preston Review (2025) 417 n 3.

⁵ Australian Institute of Employment Rights, *A New Work Relations Architecture*, ed J Fleming (Hardie Grant, 2022).

The notion that deregulation⁶ will, over the long-term, lead to more productive workplaces and increased wages is not supported by the declining real wages of workers since the late 1970s in Australia, or by comparative evidence. This period is correlated with increasing profit share to companies, rather than increased workers' wages. This belies the fact that a variety of other factors may affect productivity.⁷ Work involves so much more than just wages. There are many areas of employment policy and law where increasing fairness might also increase productivity and where government may fruitfully place its attention:

First, reducing workplace sexual harassment – as a study by Deloitte Economics leading up to the *Respect at Work* laws found, workplace sexual harassment is extremely costly to Australian employers at over \$3.8 billion annually, with most costs related to lost productivity of workers.⁸ The benefits of sexual harassment are largely confined to the perpetrator's own satisfaction and their exercise of power, but the risks to workplace productivity are considerable, including increased employee (and largely women's) sick leave, staff losses, lower staff performance and compensation as well as engagement in timely complaints and legal processes for both complainants and respondents. In addition, businesses that allow sexual harassment to occur can have reputational and legal costs that reduce firm-level productivity.

⁶ A study in 2012 commissioned by PM Gillard found that there was not a relationship between productivity and industrial relations regulation: cited in B Ellem et al, *Work and Industrial Policy in Australia* (Bristol University Press, 2025) 89 (citing R McCallum, M Moore and J Edwards, *Towards More Productive and Equitable Workplaces: An Evaluation of the Fair Work Legislation* (Report, 2012) 7). The panel said it was 'not persuaded that the legislative framework for industrial relations accounts for this productivity slowdown' (citing McCallum et al, 2012, 7).

⁷ B Ellem et al, *Work and Industrial Policy in Australia* (Bristol University Press, 2025) 86 argue these include 'investment in capital and new technology, research and development capacity, investment in employees' skills, management capacity and work organisation. These factors can allow businesses to organise work and production processes to use capital and manage labour more efficiently, produce more with the same or fewer resources, and respond effectively to technological change in ways that can potentially enhance productivity.'

⁸ Deloitte Economics, *The economic cost of sexual harassment in the workplace: Report for the Sexual Harassment National Inquiry* (Report, 2020).

Second, addressing workplace racism – The effects of workplace racism are like sexual harassment; reducing workplace racism would make workplaces fairer for people of diverse background and would also increase the productivity of these workplaces. Racism is costly for employers as it leads to staff losses, psychosocial mental health injury, heart disease, diabetes and therefore increased personal leave and absenteeism, lower staff performance and spiked workers compensation rates. Dr Elias and his colleague, Professor Paradies estimate that racism costs the Australian economy \$37 billion dollars a year and that it affects 20% of all workers in Australia.⁹ Furthermore, my research shows that racism often intersects with other forms of inequitable workplace behaviour, including underpayment.¹⁰ Diverse and thriving workplaces are not only less costly to employers, they are also more entrepreneurial. Research on the world's most successful and productive workplaces (including those in Silicon Valley and NASA) demonstrate that they thrive off the opposite of racism – cultural dialogue, diversity and creativity that comes through the interaction of cultures.¹¹

Third, Working From Home (WFH) is an area which at first blush might be seen to reduce productivity. The evidence is contested and, in some instances, it has merit.¹² However, a denial of **Working From Home** opportunities for workers, especially those with carer responsibilities – which is disproportionately women – could see a reduction in morale and an increase in absenteeism, which in turn reduces productivity. Recent research by the Productivity Commission found that hybrid work provisions were either productivity enhancing or neutral, but that they benefited women, thereby

⁹ Deakin University, 'Counting the billion dollar cost of racism in Australia' (6 April 2016) *Deakin University*. See also: A Elias and Y Paradies, 'Estimating the mental health costs of racial discrimination' (2016) 16 *BMC Public Health* 1205.

¹⁰ Anna Boucher, *Patterns of Exploitation: Understanding Migrant Worker Rights Violations in Advanced Democracies* (Oxford University Press, 2023), ch 1.

¹¹ Scott Page, *The Diversity Bonus: How Great Teams Pay off in the Knowledge Economy* (Princeton University Press, 2017).

¹² See for instance N Bloom, R Han and J Liang, 'Hybrid working from home improves retention without damaging performance' (2024) 630 *Nature* 920, 920–25 who find that working from home two days a week (hybrid model) do not affect workplace performance. However, higher rates of working from home (i.e. more days per week) may however, affect productivity.

increasing gender equality, a central form of fairness.¹³ Not all workplaces where women are overrepresented can feasibly accommodate WFH arrangements – in particular, age care, child care, disability care, nursing, teaching often cannot, as they require in person provision of services (according to the Gender Equality at Work Index, 70% of workers in community and personal services are women).¹⁴

In short, productivity and fairness can at times be reconciled and by extending our definition of regulation beyond wages to a broader ambit of issues that employees demand, we can potentially increase their outputs, while minimising other harms.

Bibliography

A Articles/Chapters

Bray, M and A Stewart, 'What is Distinctive about the Fair Work Regime?' (2013) 26(1) *Australian Journal of Labour Law* 21.

Ellem, B, C F Wright, S Clibborn, R Cooper, F Flanagan, and A Veen, *Work and Industrial Policy in Australia* (Bristol University Press, 2025).

Elias, A and Y Paradies, 'Estimating the mental health costs of racial discrimination' (2016) 16 *BMC Public Health* 1205.

¹³ Note that the Productivity Commission of Australia also found that some areas of the labour market that disproportionately hire women, in particular the care sector and NDIS, can drive down conventional measures of productivity and is currently investigating ways to address this: Productivity Commission, *Delivering Quality Care More Effectively: Interim Report* (Report, 2025).

¹⁴ Hill, E., Cooper R., Seetahul, S., and Bedi, A (2025) Gender Equality @ Work Index Report, November 2025, The Australian Centre for Gender Equality and Inclusion @ Work. <https://doi.org/10.25910/e34w-8860>. Note that the relationship between care work and productivity more broadly is vexed and may relate to the fact that care work has a particular relational quality that may not lend itself to standard measures of productivity. This issue has been canvassed by scholars, for instance Diana Coyle, *The idea of productivity*, The Productivity Institute, Economic and Social Research Council, June 2021, available at <https://www.productivity.ac.uk/wp-content/uploads/2021/06/WP003-The-idea-of-productivity-cover-FINAL.pdf>

Harvey, K. and McKenzie, M. (2025) 'Productivity, Pay Rates and Power', *Journal of Work and Ideas*, 2025(2), p. 2. Australian Institute of Employment Rights (AIER).

Rundle, Kristen, 'Forms of Liberty' (2007) 29(2) *Sydney Law Review* 203.

B Books

Australian Institute of Employment Rights, *A New Work Relations Architecture*, ed J Fleming (Hardie Grant, 2022).

Boucher, Anna, *Patterns of Exploitation: Understanding Migrant Worker Rights Violations in Advanced Democracies* (Oxford University Press, 2023).

Burnside, Julian, *Watching Brief: Looking at Law, Literature and Liberty* (Scribe Publications, 2007).

Page, Scott, *The Diversity Bonus: How Great Teams Pay off in the Knowledge Economy* (Princeton University Press, 2017).

C Reports/Inquiries/Working Papers

Bray, M and A Stewart, *Secure Jobs Better Pay Review Report* (Report, Department of Employment and Workplace Relations, March 2025).

Coyle, D "The idea of productivity," The Productivity Institute, Economic and Social Research Council, June 2021, available at <https://www.productivity.ac.uk/wp-content/uploads/2021/06/WP003-The-idea-of-productivity-cover-FINAL.pdf>

Deloitte Economics, *The economic cost of sexual harassment in the workplace: Report for the Sexual Harassment National Inquiry* (Report, 2020).

Hill, E., Cooper R., Seetahul, S., and Bedi, A (2025) Gender Equality @ Work Index Report, November 2025, The Australian Centre for Gender Equality and Inclusion @ Work. <https://doi.org/10.25910/e34w-8860>

McCallum, R, M Moore and J Edwards, *Towards More Productive and Equitable Workplaces: An Evaluation of the Fair Work Legislation* (Report, 2012).

Productivity Commission, *Advancing Prosperity: Five-year Productivity Inquiry Report* (Report, 2023) vol 1.

Productivity Commission, *Delivering Quality Care More Effectively: Interim Report* (Report, 2025).

D Other

Bloom, N, R Han and J Liang, 'Hybrid working from home improves retention without damaging performance' (2024) 630 *Nature* 920.

Brey and Preston Review (2025).

Deakin University, 'Counting the billion-dollar cost of racism in Australia' (6 April 2016) *Deakin University*.

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