

## Ron McCallum Debate 2025 – Opening Remarks

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### Abstract

*The following is from an address prepared for the 15th Annual Ron McCallum Debate 2025, held at the Wesley Conference Centre, Sydney, on Thursday, 6th November 2025, on the theme 'Now or Never? How Can We Make Workplace Relations Fairer and More Productive?'*

### Key words

*Workplace Relations, Industrial Relations, Fair Work Act, fairness, fairness, productivity, law reform*

I also would like to acknowledge Ron McCallum AO and, while the format of tonight's proceedings is that of a debate, upfront I agree 100% with Ron's view that he was far too young to be awarded the Senior Australian of the Year way back in 2011.

Turning to the theme this evening – productivity and fairness in Australia's workplace relations system – we often treat them as competing ideas, as if you can't have both. But fairness without productivity doesn't create secure jobs. It creates stagnation. And productivity without fairness doesn't build lasting workplaces. It builds resentment.

Our challenge is to restore the balance that has been lost. There was a time when Australian lawmakers – on both sides of politics – had the courage to pursue meaningful industrial relations reform

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in the national interest. In the 1980s, 1990s and early 2000s, governments of all colours understood that productivity and fairness could advance together. They modernised institutions, simplified awards, encouraged enterprise bargaining, facilitated collective and individual agreement-making – both union and non-union – and gave businesses flexibility to grow. That spirit of reform – that courage to make hard decisions for the long-term benefit of the nation – has been lost. It must be reclaimed. Because the reality is this: Australia’s productivity growth has slowed to its weakest pace in decades. Labour productivity grew by just 1.1% a year in the decade to 2020: the slowest rate since the 1950s. And when productivity stalls, everything stalls: wage growth, investment, competitiveness, and ultimately, living standards.

The Productivity Commission has been clear about what’s required. We need to drive innovation and technology diffusion, invest in workforce skills and capabilities, modernise IT infrastructure, and strengthen business competition and dynamics. Above all, we need a workplace relations framework that encourages performance and trust – not one that drowns employers and employees alike in complexity.

The awards system is a prime example. What was once intended as a simple safety net has become an unwieldy mess of overlapping classifications, allowances, and pay and conditions rules. Even the largest employers, with teams of lawyers, struggle to interpret them correctly. Think ABC, BHP, Westpac, Woolworths, Coles, and even the IR Minister’s own department, DEWR. That’s why we continue to see waves of unintentional underpayments – not because businesses don’t want to pay fairly, but because the system itself is almost impossible to navigate.

It should be more widely acknowledged that Australia is the only country on the planet with an industrial awards system, replete with minimum employment legislation that continues to grow and fester. As a country, if our system of national minimum standards and over 120 industrial awards – with

more than two million words – was so productive, fair and efficient, then just maybe some other developed country might replicate our ‘special’ IR system. Of course, they won’t.

What Australia needs is a set of universal minimum standards and a system whereby individual and collective agreements can be registered. Perhaps ChatGPT could reduce our current legislative complexity back to something less than the 67 pages in the original Commonwealth Conciliation and Arbitration Act of 1904? (Thomson Reuters: Fair Work legislation as at 26 August 2024 had 2,213 pages.) I know – this is a frightening thought for IR technocrats and employment lawyers! But alas, there is no need to fear, as it appears we are stuck with our imperfect system.

A system where each new compliance requirement is sold as protecting workers, but in practice it traps everyone in uncertainty and fear. Fairness is not served by a system so complicated that honest mistakes are treated like misconduct.

For small and medium-sized businesses, this complexity is a productivity killer.

Time and energy that should go into improving processes, training staff or expanding output is instead consumed by award interpretation, reporting, and defensive legal advice. And when risk outweighs reward, investment stalls. That’s not just an employer problem. It’s a national one.

The Fair Work Commission, too, is under strain from the system’s design. This is due in part to the legislative sprawl that means every issue – from pay, rostering and redundancy to performance management, general protections and dismissal – can end up before the Tribunal.

The volume and complexity of the law risks overloading the Commission, including through encouraging nuisance litigants to make unmeritorious claims.

An example recently referenced by FWC President Hatcher is the unsustainable workload of the Commission, with unfair dismissal and general protections claims on track for 50,000 cases per annum. Many are individual self-represented employee claims – aided by a very enthusiastic legal profession all

too willing to assist individuals on a ‘no win, no fee’ basis. Cases can drag on for months. If appealed to the courts – sometimes years. And when minor enterprise bargaining disputes require Commission intervention via conciliation or arbitration, productivity, efficiency and trust can be casualties.

And this is precisely why reform of the Commission’s structures and jurisdictions is overdue. We need a more balanced, credible and modern tribunal. A tripartite appointment process – involving government, employers and the ACTU – should replace the current overtly political model. We should also lift the statutory retirement age for Commission members from 65 to 70, in line with other federal judicial offices, to retain experience and continuity. And we must restore balance in decision-making by ensuring appointments come from a broader range of real-world backgrounds – including business, operations, major project management and workforce leadership.

Sadly, we have an IR framework that encourages adversarial positions and disputes, rewards compliance over performance, and promotes process over outcomes. It’s no wonder business dynamism is falling, entrepreneurship is declining, and productivity has flatlined. This isn’t about ideology; it’s about practicality. If we want fairness that’s sustainable, it must rest on a foundation of productive, confident and competitive enterprises.

True productivity means workplaces that are trusted to perform, innovate and reward their people, not those paralysed by fear of getting it wrong and being labelled a “wage thief” or worse. This also requires fixing the two jurisdictions causing the largest explosion in unmeritorious claims: unfair dismissal and general protections. Unfair dismissal laws must return to their original purpose – assessing fairness of process, not hindsight or personal sympathy.

Today, employers with valid reasons for termination routinely lose cases because of inconsistent reasoning or emotional weighting. And general protections laws desperately need tightening. The six-year time limit should be replaced with something reasonable. Compensation should be capped. And the

reverse onus of proof – which all but presumes employer guilt – must be removed if we want to curb opportunistic claims that are often settled simply to avoid massive legal costs. Even raising the filing fee from \$89 to a more realistic level (\$500?) would deter a wave of nuisance claims.

We can have both fairness and productivity. But that requires rediscovering the courage to simplify and modernise. The evidence is in front of us: innovation, skills, competition and good business leadership are what lift living standards. If we keep confusing fairness with over-regulation, Australia will keep drifting – slower growth, weaker wages and lower prosperity for everyone. We'll see billions of dollars in capital investment that should be pumped into our country – via industries like resources and energy, where I've worked most of my career – allocated overseas to less complex and burdensome destinations.

So, the question isn't whether we believe in productivity or fairness. It's whether our lawmakers – backed by business, employees, unions and the broader community – can find the will to build a system that genuinely delivers both. Because without productivity, fairness is a mirage. And without fairness, productivity cannot thrive. Thank you.

## **Declaration of interests**

Nil.

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