THE IMPACT OF THE COVID-19 VIRUS ON INDUSTRIAL RELATIONS

Ray Markey

The social and economic impact of COVID-19 has extended to industrial relations as a result of major changes to work and the labour market. Immediately after the lockdown began, 15% of the Australian workforce was laid off. Job losses have been unevenly spread, with hospitality experiencing a 33.4% reduction, and arts and recreation services 27% (ABS 2020a). Those aged under 30 lost jobs at a particularly high rate. However, the official unemployment rate understates loss of work, because of the JobKeeper wage subsidy, reduced labour force participation and the restrictive ABS definition of unemployment: actively looking for work and less than one hour's work per week. The Reserve Bank estimates that total hours worked fell by 20%, while Treasury estimated unemployment at close to 15% by late May, 2020 (Black 2020a).

Regulatory change and the parties

Reflecting the severity of the crisis, the federal government has consulted with the ACTU over policies such as JobKeeper, and made approaches to the FWC regarding award variations. Such cooperation is a rare positive development, but is limited. The ACTU sought wider JobKeeper coverage, to include casuals without 12 months of engagement by an employer and non-permanent residents, but was unsuccessful in getting these demands accepted. Other issues have also remained matters of disagreement.

In mid-April 2020, the government reduced by regulation the period of notice required for an employee vote on proposed enterprise agreement variations, from seven days to one. This was to assist employers seeking

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flexibility to manage the crisis, and is limited to 12 months as a result of One Nation's intervention in the Senate. However, the change has attracted union and Labor opposition, with the CFMMEU challenging the regulations in the Federal Court (*Workplace Express* 7 and 14 May 2020). In fact, few employers seem to be using the shorter notice periods to vary enterprise agreements (*Workplace Express* 21 May 2020).

The Fair Work Commission (FWC) has varied over 100 awards to include special unpaid 'pandemic leave' for two weeks and access to annual leave at half pay, initially up until 30 June 2020. Almost 20 awards were excluded in construction, maritime and resource sectors because they have been less affected by the pandemic and are less award-reliant (*Workplace Express* 8 April 2020).

Other award variations concerning reductions to hours, directions to take leave, and flexibility in duties in relation to the lock-down have occurred on an industry basis, often by agreement between the parties. For example, in the automobile industry. the AMWU, SDA and ACTU consented to such award variations sought by employers (*Workplace Express* 15 May 2020).

A similar application to the FWC by the Australian Industry Group (Ai Group) for variations to the Fast Food Industry Award covering 200,000 workers was endorsed by the SDA and ACTU (Brinsden 2020). The SDA's rival, the Retail and Fast Food Workers' Union (RAFFWU) unsuccessfully challenged the application, although the FWC reduced the three months operational period to 10 weeks and increased safeguards requiring genuine employee agreement (*Workplace Express* 14 and 20 May 2020).

The NTEU reached a sectoral agreement to protect jobs and conditions, including for casuals, but which included the possibility of temporary wage cuts and other amended conditions. These would have been scrutinised by a national expert union panel and university joint management-union committees (Markey 2020). However, the NTEU later abandoned a plebiscite of ratification after many employers declined participation and some members opposed the agreement (NTEU 2020).

There are substantial limits to the degree of cooperation. Previously conflictual relations have persisted between Qantas/Jetstar and unions. One of 20,000 Qantas employees stood down successfully challenged the deduction of previous pay from his first JobKeeper instalment in the FWC (*Workplace Express* 25 May 2020). Unions failed in an attempt to protect paid sick leave in stand-downs (*Workplace Express* 18 May 2020). The

Australian Licensed Aircraft Engineers' Association (ALAEA) has also contested stand-downs of its members, claiming that it was a business decision rather than a direct result of the impact of the virus on operations. The ALAEA claims that maintenance work continues with grounded aircraft and that workloads have become unreasonable. Qantas has gained an injunction in the Federal Court to test the jurisdictional grounds for FWC arbitration (*Workplace Express* 15 and 21 May 2020). Plans by Qantas to recommence domestic flights without vacant seating has also been criticised on health safety grounds by the TWU (Lane 2020).

From mid-May 2020, the FWC has heard numerous individual disputes regarding application of award variations for stand-downs, hours reductions and requests to take leave, and unfair dismissal cases have 'surged' (*Workplace Express* 8 and 13 May 2020).

Minimum wage review

Disagreement has also arisen over the annual minimum wage hearing. The FWC has extended its decision from July 1 to July 15, to allow submissions to take account of June 3 national accounts data. However, it has also noted that it may delay an increase under exceptional circumstances, or exempt some sectors.

The ACTU has argued for what it considers to be a modest increase of 4%, noting the importance of a higher minimum wage in bolstering demand, thereby helping economic recovery (*Workplace Express* 18 May 2020).

Government and employers have argued that, given the state of the economy and business weakness, an increase should be minimal or zero. The government has urged the FWC be cautious and 'prioritise' viability of businesses so as not to jeopardise employment, as has the Ai Group. The Australian Chamber of Commerce and Industry (ACCI) has argued that the minimum wage should remain frozen until at least mid 2021 to assist business recovery. It has even suggested a reduction in the minimum wage, citing the 10% reduction awarded on the basis of capacity to pay during the 1930s depression as a precedent (*Workplace Express* 6 May 2020; Brinsden 2020).

The outcome of the minimum wage decision will have a substantial knock-on effect beyond award employees who comprise about a quarter of the workforce (ABS 2018). Wages in many enterprise agreements are tied to minimum wage changes, particularly in the retail sector, where award coverage is high, at 45% (*Workplace Express* 19 May 2020). A reduction or no increase in the minimum wage, therefore, would seriously weaken demand and contribute to a downward spiral in economic activity.

Wages growth has been at record lows in recent years, and the economy has been sluggish. Immediately prior to the COVID-19 crisis, wages growth had fallen behind the inflation rate – to 2.1% in trend terms for the March quarter (ABS 2020b). The Reserve Bank has predicted that wages will grow more slowly as it expects many businesses and employees will negotiate wage freezes and reductions in enterprise agreements during the next 12 months (Reserve Bank 2020).

Post-COVID-19 policy

All parties have expressed a desire to continue a more cooperative relationship during recovery from crisis. ACTU secretary, Sally McManus, emphasised the benefit of engagement with unions and listening to the 'voice of working people' in strengthening government's response to COVID-19. In similar vein, ACCI has suggested expanding FWC powers to mediate disputes over return to work, rather than dealing with them through adverse action claims (*Workplace Express* 21 May 2020).

However, employer groups continue to promote their previous agendas. The Business Council of Australia (BCA) and Ai Group have advocated greater 'flexibility' and simplification of the award system for the economy to successfully rebuild (*Workplace Express* 15 May 2020). David Peetz warns that this is code for shrinking the award safety net, but argues that there is scope for simplification of the enterprise bargaining system to benefit workers (Peetz 2020). Ai Group has also called for tighter legislative definition of 'casual' worker status, after recent court decisions granted leave for long term 'causals' (*Workplace Express* 21 May 2020).

The government's thinking seems close to that of employer groups, including the pursuit of company tax cuts, deregulation, as well as industrial relations reform. However, Michael Keating, former head of the departments of Prime Minister and Cabinet, Finance, and Employment Relations, argues that this represents 'a failed agenda from the past' that will not deliver the increased demand or productivity that are needed – and were needed even before the crisis. He suggests that extra revenue from tax cuts would predominantly be paid to shareholders in share buybacks and increased dividends. Likewise, he contends that industrial relations regulation in Australia is even more flexible than in America, and reforms of the past 25 years have had little substantial impact on productivity, labour market adjustment wages growth or industrial disputation. Overall, industrial relations reform is mainly ‘camouflage for lower wages, which is the last thing this economy needs right now’ (Pascoe 2020).

Jeff Borland has argued similarly, citing the Productivity Commission’s 2015 conclusion that the system performed relatively well in labour market and flexibility terms. He suggests that any reform should focus more on negative distributional effects of the current system likely to be worsened by the crisis, such as the position of casual employees, minimum conditions for gig workers, and wages theft (Borland 2020).

New work practices

The nature of work has changed substantially for many still actively employed. Nowhere is this more evident than in health services, where specialist doctors have re-purposed and nurses and trainees have undertaken intensive training to deal with the virus, particularly for intensive care facilities. The greatest change has been in working from home, with some estimates showing that 30% of the workforce is currently doing so, in Australia and globally (ILO 2020).

This working from home is predominant amongst clerical and professional workers and in some services. Some commentators have suggested that home working will become the ‘new normal’ for many. Teleworking in homes – and in cafes and other public sites – has slowly grown, but it has taken an unanticipated crisis to instigate a major uptake. Recent surveys suggest that up to 40% of employees are likely to work remotely at least some of the time (Black 2020b). The FWC has indicated that it expects home working for many of its own members and staff to become a permanent change (*Workplace Express* 8 May 2020). From an economic history perspective, this constitutes a ‘back to the future’ shift, since working from home was the norm prior to the development of factories and large offices (ILO 2020).

Employers and workers benefit from home-work. Improved productivity is a potential gain derived from the other advantages. Home-work allows regaining of time and costs in commuting to and from work, and reduced congestion of transport systems. This in turn reduces greenhouse gas emissions, from which all benefit. Working from home can allow workers to exercise discretionary control over hours of work. Meetings are likely to be less frequent and shorter. Working from home can also assist child care, which is important if schools and child care centres are closed or there is fear of sending children to them (Doran 2020). Front-line workers in health and community services and retail during the crisis are disproportionately women, likely to have caring responsibilities.

However, working from home may also have negative impacts. It has a long association with exploitation in the clothing industry (ILO 2020). Demarcation between work and leisure is potentially blurred, leading to more extensive hours. Because of our devices, it has already encroached upon down time. Home-work sites may be inadequately structured for effective or healthy working, denying potential productivity gains. Issues of inequality result from varied access to efficient internet or computer hardware, and there is potential for transfer of costs to workers if they are required to provide these work tools themselves. Health and safety issues may arise, and home offices are not subject to workplace regulations or even compensation for injuries. Working from home may also create isolation and mental health problems.

Such issues require adequate management and employer investment in providing adequate equipment for workers at home. The ILO favours government intervention to ensure workers are not disadvantaged by working from home (ILO 2020). Pennington and Stanford (2020) have advocated specific protections for home workers, including the right to reject home working if it does not suit their needs, and an award allowance to cover extra expenses.

A number of other changes to work practices have occurred as a result of COVID-19, with both benefits and drawbacks for workers. International work-related travel has virtually ceased. We are likely to see remote meetings and even conferences continue. Social distancing of other kinds is also likely to remain where possible. The open plan office, which has had many downsides for workers, will be less prevalent.

As re-opening of the economy has begun from mid-May 2020, new demands are emerging. Safety issues will be paramount in the new context. The United Workers' Union has called for mandatory training for all hospitality workers to operate safely in a COVID-19 environment (*Workplace Express* 14 May 2020). Some workers are exposed to greater risk, even beyond the health and care sectors. For example, as schools reopen, surveys of cleaners found that many lacked sufficient equipment such as gloves and disinfectant to perform adequate ‘deep cleaning’ safely (Kelly 2020). Sally McManus, ACTU secretary, has called for strong health and safety laws to maintain safe workplaces (McManus 2020).

The ACTU is seeking paid pandemic leave for 1.6 million health and community services workers reliant on awards to determine their conditions. This would ensure that workers do not turn up to workplaces when sick and potentially spread disease. The ACTU has also lobbied for workers compensation schemes to declare COVID-19 an occupational disease for health workers (*Workplace Express* 16 April 2020).

In New Zealand, Prime Minister Jacinda Adhern has floated the idea of a four-day working week on an enterprise-by-enterprise basis. In Australia, IT and finance seem to be the sectors most likely to go down this path. Digital marketing firm Versa took this step in July 2018, and reports no positive or negative impact on productivity, increased staff morale and a very significant increase in staff retention, saving substantially in training and recruitment costs. Jim Stanford, from the Centre for Future Work, has acknowledged the potential of a four-day week, contributing to COVID-19 safety, with staggered shifts and attendance reducing crowding on public transport and in lifts. However, he also warned that it should not be based on wage reductions (Purcell 2020).

High unemployment and underemployment are likely to persist for some time, particularly in tourism. Unions consequently have been weakened, as the industrial relations parties have been forced to accommodate regulatory change. Some work practice changes have positive implications, but overall workers, employers and governments face major challenges in the medium to long term.

Ray Markey is Emeritus Professor in the Centre for Workforce Futures, Macquarie Business School.

Ray.markey@mq.edu.au

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