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Agriculture: a case study in industrial relations reform

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Organised Australian labour first demonstrated its power in the shearing industry just over 100 years ago. The system of arbitration developed over the last century continues to have a profound impact on agriculture. This article profiles the Australian rural labour market and identifies some continuing regulatory impediments to the proper functioning of the rural labour market. A brief review of the links between agriculture and other industries in Australia concludes that the greatest improvement in farm profitability from a better functioning labour market is to be had from productivity increases in industries outside the farm gate.

1. Introduction

This article provides a profile of the Australian rural labour market and summarises some aspects of the historical interaction between the industry and labour market regulation. After identifying some continuing regulatory impediments to the proper functioning of the rural labour market, a comparison is made between agriculture and other industries.

A brief review of research on the links between agriculture and other industries in Australia leads to the conclusion that the greatest improvement in farm profitability from a better functioning labour market is to be had from productivity increases in industries outside the farm gate. The meat processing industry and the waterfront provide useful examples, and an attempt is made to quantify the gains to agriculture from labour market reform in those industries.

2. The agricultural workforce

Australian agriculture engages about 409 000 people, about 5 per cent of the total workforce, producing about 21 per cent of Australia's export income. Approximately half this number are employees, with the balance being

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self-employed and unpaid family labour. In 1993–94, family labour constituted 75 per cent of the total value of labour on broadacre family farms.

The composition of the workforce and institutional framework within which it must operate are obviously important to the profitability of businesses in the sector. Nonetheless, the negative influences of the institutional framework have been neutralised to some extent by management practices within the farm sector for the rural work force and farm profitability is more readily influenced by industrial relations reform upstream and downstream from the farm gate.

3. Links

Although agriculture accounts for less than 5 per cent of GDP (1995/96), this understates the importance of the sector to the economy. Tamblyn and Powell (1985) show that forward links make agriculture essential to 32 per cent of employment in the rest of the economy. This indirect employment means that inefficiencies in the labour market outside the farm gate impact adversely on the profitability of the farm sector.

This conclusion is hardly surprising given that a large proportion of the manufacturing industry is engaged in the processing of farm products into food and fibre products. This sector has an annual output of A$30 billion from about 3 500 businesses across Australia.[1] The farm sector is amongst the most productive and internationally competitive sectors of the economy. EPAC estimates that productivity levels in Australian agriculture are about 20 per cent above comparable industries in OECD countries whereas, for the Australian business sector as a whole, productivity levels are about 10 per cent below average OECD levels. Some of these poorer performing sectors have a significant effect on farm profitability. For example, Stoekel estimates that a 10 per cent productivity increase in beef processing would have a 16-fold larger effect on farm profitability than a comparable increase in on-farm profitability.

4. The meat industry

The meat industry is perhaps the best example of how our current system of labour market regulation has caused economic and social loss, particularly to the farm sector. A series of studies over the last decade have revealed that our meat processing sector is about half as efficient as our competitors in the United States and New Zealand. Given that most Australian meat is sold

[1] See Ritchie (1998).

on international markets at the world price, how can we sustain such gross inefficiency? The answer: pay half as much for livestock as our competitors.

The intriguing fact is that the rate of pay for meat workers does not explain why we are twice as expensive at processing than our competitors. The average meat worker in Australia costs about 20 per cent more than the equivalent US worker. How, then, does this translate into double the cost of processing?

Perhaps this is best explained by describing briefly the infamous 'tally system'. Under this arrangement, meat workers are paid a set amount for processing up to a certain number of carcases per day, known as 'minimum tally'. For each additional carcase processed a certain amount is earned until 'maximum tally' is reached and from then on each carcase is paid for at time and a half, and then double time.

The meat industry is a low margin, high turnover business. Labour costs account for about 65 per cent of abattoir operating expenses. When maximum tally is reached and penalty rates are payable, most abattoirs must shut down because it is simply unprofitable to operate. As a consequence, the average Australian abattoir operates only 36 hours per week. This means that we have an over-investment in abattoirs which are grossly under-utilised.

The crucial problem with the tally is that it not only fixes the rate of pay, it also fixes the rate of productivity. An employer who was able to introduce new technology that allowed a fixed number of animals to be processed in half the time would find that his workforce would leave the premises in half the time. That is how the productivity gains would be distributed if the employer was obliged to adhere to the award. Clearly, this is a grossly inefficient form of distribution. The employer in such a predicament has no incentive to introduce new technology, nor have the workers because their income would not rise.

It should be no surprise, then, to learn that meat workers are in fact a relatively poorly paid section of our workforce. In large part this is due to the awards under which they work. Of course, the major loser is the livestock producer. Australian abattoirs cannot influence the world price for meat. They cannot influence the world price for capital. The Industrial Relations Commission fixes the price of labour and its productivity. If they want to make a profit, they must calculate these costs and then calculate the remainder left with which to pay for the livestock. As long as most of their competitors face the same fixed prices for labour and capital, abattoirs can simply pass on the inefficiencies to the producer in the form of lower livestock prices, in the case of beef, paying 57 per cent of the US farm gate price for an equivalent animal.[2]

[2] Palmer (1996).

Table 1 Projected gains from a 4 per cent improvement in beef processing productivity

Payoff	If changes are confined to AMH	If changes are adopted industry-wide
Net present value of beef Production — 1995 to 2005	+ $62 m	+ $404 m
Beef production — 1996	+ 8 kt cwe	+ 52 kt cwe
Beef exports — 1996	+ 8 kt cwe	+ 47 kt cwe
Beef sales to Japan	+ 2 kt cwe	+ 16 kt cwe
Real GDP (gain per year in 1994–95 dollars)	+ $26 m	+ $176 m

Source: Centre for International Economics.

For some idea of the quantitative gains from even modest reform, consider the projected gains from a modest 4 per cent improvement in meat processing productivity based on the Australia Meat Holdings Enterprise Flexibility Agreement. These are summarised in table 1.

This example has general application in that it illustrates that highly efficient sectors in the economy, such as livestock production, can be seriously handicapped by inefficiency elsewhere in the production chain. We cannot afford to be insular in business today. Getting the industrial relations balance right in one sector may mean nothing if there is imbalance elsewhere.

5. The waterfront

The cost of getting rural produce across the waterfront is over 4 per cent of the export price. If we assume that the domestic price for most agricultural produce is the export price less the cost of exporting (the domestic price would increase by the same amount as the net export price if the cost of exporting fell), then we can say that a 25 per cent fall in the cost of shifting goods across the waterfront would increase the price of rural produce by 1 per cent. In 1995–96 this increase would have added about A$1 900 per year to average broadacre farm incomes: a 27 per cent increase in farm business profit. Whilst this calculation is crude, it does illustrate how a small reduction in costs downstream from the farm sector can have profound effects on farm profitability.

As we will see, the success of waterfront reform depends ultimately on reform of the labour arrangements in our ports. The creation of new ports, providing greater competition, may reduce costs for users by competing away the inefficiencies of port authorities and State government tax regimes. It will mean nothing for the greater problem of labour productivity,

however, if these new ports must engage their labour in the same manner as at present.

Until the passage of the Workplace Relations Act, promulgated earlier this year, the Maritime Union of Australia (MUA) monopoly was assured. Any new entrant to the stevedoring industry could be served immediately with a log of claims and thereby 'roped-in' to the relevant industrial awards. The new Act, while falling far short of the New Zealand equivalent, which precipitated dramatic reform of the waterfront, does at least allow alternative employment arrangements.

Whereas the previous Act ensured preference in employment for union members, the Workplace Relations Act outlaws such discrimination. While there are still serious limitations to the flexibilities able to be achieved by employers, there is now an opportunity for stevedores to negotiate substantial productivity improvements if they can withstand the industrial pressure sure to be directed at them by the MUA.

While the major stevedores acknowledge they could manage their businesses with 40 per cent of their current labour force, if only the remainder worked efficiently, until early 1998, little or no progress was made towards that objective. Nonetheless, significant change in employment arrangements can still come through new operators utilising the opportunities created by the Workplace Relations Act.

Furthermore, new operators taking this course of action must source their labour from outside the existing industry. This is because the culture of the waterfront to date is such that employees appear to place far greater importance on loyalty to the MUA than to their employer. Many believe they owe their jobs to the union, not their employer or port users. While workers often say 'you can't fight the union', there is almost daily evidence they can fight their employer, and win.

The waterfront industry reform effort of the early part of this decade provides a classic example of how international benchmarks are the essential measurement rather than simply relying on a comparison with past domestic performance. Based on the latter measure, the waterfront reform program was 'a wonderful result': a reduction in the labour force by about 55 per cent, the same quantum of work done by less than half, by definition productivity must have doubled!

Sadly, the harsh reality becomes apparent when our domestic performance is measured against international standards. For example, the reform effort in New Zealand resulted in stevedoring charges falling, a doubling of cargoes handled with only 30 per cent of the pre-reform workforce.[3] Not only is

[3] BIE Benchmarking Study op. cit.

our best performing port no better than the worst in Europe, our biggest port, Sydney has a container handling rate equivalent to a Third World port. The cost of transferring a cargo of newsprint in Sydney from ship to shore is ten times that of Tauranga, New Zealand, using equivalent equipment.

6. The industrial relations system

The pastoral industry has played a central role in the history of labour market regulation in Australia. The second case decided by the then newly created Commonwealth Court of Arbitration and Conciliation in 1906 was a dispute between the Australian Workers Union and the Pastoralists Federal Council. The Court's ruling established the Pastoral Industry Award through which the minimum price of labour has been set for most of the sector ever since.

Despite having one of Australia's oldest industrial awards (shearing rates were the second issue considered by the first Bench of the Arbitration Court after the waterfront), the Pastoral Industry Award (1907), employers and employees in agriculture have an older tradition, still maintained today, of reaching mutually satisfactory arrangements without the involvement of third parties. Driven principally by necessity borne of isolation and mutual dependence in scarcely populated regions, commonsense has generally prevailed over arbitrary rules formed in tribunals far from the workplace, and the agreements reached have been to their mutual benefit in terms of wages, conditions and job security.

This informal 'enterprise bargaining' has occasionally resulted in prosecutions of both employers and employees when third parties have taken it upon themselves to enforce aspects of the industrial regulations which run counter to agreements reached in the workplace. Perhaps the most notorious example of this is the dispute over the use of wide combs by shearers in the 1970s and 1980s. The Pastoral Industry Award prescribed that shearers could use shearing combs no wider than 64 mm, when it had become common practice for them to use combs of 85 mm or more. After years of disputation and litigation, the practice adopted by the workers themselves, and accepted by their employers, came to be accepted by the union and was eventually legitimised by the Industrial Relations Commission.

The spread and coverage of informal enterprise and workplace bargaining have always been high in agriculture, as explained above. Nonetheless, the passage of major amendments to the Act ostensibly designed to facilitate enterprise agreements notwithstanding, there is a very low incidence of formal bargaining, as provided for in the Workplace Relations Act and its predecessors. Where progress has been made in formal bargaining, it has

been restricted to large employers, principally in processing agricultural produce.

Even among the large employers in the processing sector, take-up has been low. Only one third of surveyed firms reported having implemented some enterprise agreement and many such agreements had not been ratified by the Industrial Commission.

7. Reasons for failure

The processes for formalising enterprise bargaining, and the manner in which enterprise agreements are interpreted and applied by the Industrial Relations Commission are the major impediments to increasing scope and coverage. In order to access Australian Workplace Agreements or certified agreements pursuant to the Workplace Relations Act, the employer must be a constitutional corporation. Since 83 per cent of farm enterprises are unincorporated, these means of formalising enterprise agreements are closed to the vast majority, other than in Victoria and the Territories.

Even where these formal agreements are available, the procedural difficulties far outweigh the benefit. It makes no sense to make formal applications for enterprise agreements when the period of employment is often less than the time taken to formalise the agreement.

The incentive for farm employers to enter such agreements is low, given the success of strategies that have kept award wages relatively low. Furthermore, rural employers have effectively resisted many of the conditions that restrict efficiency in almost every other industry. For example, the Pastoral Award does not provide for long service leave, bereavement leave, carers leave, adoption and parental leave, accident make-up pay, and redundancy and severance. All these matters are 'allowable' under the so-called award simplification provisions of the Workplace Relations Act. Whereas many industries would welcome a reduction in their awards to these allowable matters, for agriculture the inclusion of these issues would double the size of the award.

By contrast, for large employers upstream and downstream of the farm gate, award simplification and enterprise bargaining do offer the opportunity to improve the efficiency of their businesses. As we have seen in the case of the waterfront, and until recently the meat industry also, unless there is effective competition between firms there is no incentive for them to take the risk of industrial action by initiating reform of their labour arrangements. So long as their competitors face the same limitations and inefficiencies and either the consumer or the suppliers of raw materials are price takers, the cost of labour inefficiency is simply tolerated by the employer and passed on.

Measures designed to increase competition upstream and downstream product markets, such as reductions in tariffs and vigorous pursuit of competition policy generally, greatly assist in pushing employers to tackle reform of their working arrangements. Nonetheless, where there is adequate competition between firms, structural problems in the labour market, induced by regulation, remain serious impediments to efficiency.

A uniquely Australian institution, the Industrial Relations Commission, has retarded these efficiency gains. While legal technicalities and, until recently, the compulsory involvement of unions, have discouraged employers from reforming their workplace arrangements, as the following example shows, even when the relevant union has agreed with measures which would give greater responsibility to the individuals directly concerned, the Commission has declined to ratify them. The process is unattractive, but it is also unpredictable.

An agreement reached between the NFF and the woolclassers association, a federally registered union representing woolclassers, is a case in point. As part of a package of award reforms, the parties to the Woolclassers Award agreed to substantial wage increases and an award provision that sought to allow individual woolclassers to reach agreement with their employers with respect to a range of conditions without further reference to the Commission or the union.

This element of the agreement was rejected by the Commission in the first instance, and this rejection was confirmed by a senior Full Bench on appeal. These decisions were arrived at despite uncontradicted evidence that in the circumstances of the industry, which is characterised by short-term itinerant employment, formal ratification of arrangements entered into in the workplace is impossible for practical reasons. Given that the wage increases were specifically designed to ensure that no disadvantage would be incurred by employees overall, and the union consented on that basis, the attitude taken by the Commission was made even more surprising. The reason given was simply that the Act did not permit the Commission to allow agreements to be made in the workplace without formal ratification by the Commission, even if this was to be done pursuant to an award provision.

Eighteen months later, after a change in government but no change to this part of the Act, the AIRC approved a consent agreement between the Australian Wool Selling Brokers Employers Federation (AWSBEF) and the Financial Sector Union (FSUA) to allow all employees paid more than 15 per cent above the award rate to effectively waive all but the minimum entitlements under the award. The woolclassers' agreement was characterised as 'contracting out' and was rejected by the AIRC on that ground. The woolbrokers' agreement was ratified without objection.

I could examine the possible reasons for the different approaches. Some distinction between the cases could be established, but I believe that any

impartial observer would have to conclude that the essential differences were the profile of the applicants, and the political climate of the time when the Commission was approached for ratification. If this is true, it suggests that the so-called impartial umpire actively seeks to level out the playing field by taking into account factors which are not strictly relevant to the interpretation of the law in a particular case.

In the woolclassers affair the relevant union agreed with NFF that there was no disadvantage from the more flexible arrangements. The AIRC indicated that whether this was the case or not, 'contracting out' was inherently objectionable to the legislative scheme, the Wage Fixing Principles and contrary to the public interest, thus the agreement should be struck down.[4]

Given the difficulty experienced by the Commission in interpreting the provisions of the Act consistently, it is understandable that most employers find the provisions of the Act too complex to understand and apply. Certainly in agriculture, where most employment is seasonal in nature, the cost of ascertaining and complying with the requirements of formal agreements makes such a course economically and practically unfeasible.

These difficulties are compounded by the attitude taken by some trade unions, and the ACTU, who have stated publicly that they intend to take whatever steps are open to them to prevent the approval of non-union enterprise flexibility agreements. Rather than the Industrial Commission aiding and abetting this attitude, the Commission ought to take positive steps to give effect to agreements made between employees and employers regardless of the views of parties with whom there is no privity of contract.

8. The Workplace Relations Act

The Workplace Relations Act has improved the prospects of labour market flexibility by:

- introducing new objects which emphasise the need for productivity and international competitiveness;

[4] In another, more celebrated case, concerning the Tweed Valley Fruit Processors, the no disadvantage test again came in for examination by a Full Bench, this time in the context of an enterprise flexibility agreement rather than in the award stream. The Full Bench faced again a situation where the parties had consented to an arrangement that traded higher pay for some basic award conditions. Ultimately, the Bench held that the Commissioner erred in wrongly assessing that there were no reductions in award entitlements. The Commissioner was said to have erred in law in misconceiving the no disadvantage test. Paid sick leave was said to be a community standard and hence its removal qualified as a disadvantage no matter what the financial balances may have been.

- mandatory simplification of awards to 20 core provisions with only minimum rates awards to be made and revised arrangements to ensure that the exodus from State systems to Federal Awards is brought to an end;
- ensuring freedom of association and the choice to join or not to join industrial associations, prohibiting preference agreements and closed shops and discrimination based on union membership;
- reducing union monopolies conferred by the so-called 'convenient to belong to' rule, revising the AIRC's powers to confer such rights to unions, and replacing award provisions on union right of entry with a statutory right for unions with members who have invited them into the workplace;
- revising provisions relating to industrial action to restore secondary boycott legislation, prohibiting strike pay and limiting protected industrial action to the negotiation of enterprise agreements, but not during their operation;
- replacing the unfair dismissal provisions with a system which imposes some onus on the claimant to prove their claim;
- removing the jurisdiction of the AIRC to review contracts made with independent contractors;
- abolishing the new Industrial Court, returning a reduced jurisdiction to the Federal Court.

The Workplace Relations and other Legislation Amendment Bill 1996 seeks to address many of the obstacles to greater flexibility in formalising enterprise bargains referred to above. The Bill incorporates a form of no disadvantage test: John Howard's guarantee that no worker would be made worse off. It is the dual promise of greater flexibility and 'no disadvantage' that has brought about such a lengthy and complex Bill, the basic scheme of which is to preserve the award stream, with some simplification, and allow employers and employees a range of choices to move out of the award stream by agreement.

The no disadvantage test in all its forms is a concept that seeks to guarantee no losers from the process of reform. While meaningful reform is still possible with such a guarantee, the examples discussed earlier demonstrate that the method by which the guarantee is delivered is itself an obstacle to reform.

9. Conclusion

While many of the worst aspects of Australian labour market regulation have been mitigated within the rural sector, significant improvements to farm profitability are achievable by continuing to push for further reform,

particularly upstream and downstream from the farm gate. In our view, the overriding priority must be to give legal effect to agreements reached between employers and employees. Clearly, this is not the case at present, although the Workplace Relations Act has substantially improved that position. Until this is corrected, the incidence of agreements complying with the provisions of the Act will remain very low.

Without further change, informal enterprise bargains will continue to be struck at the work place. Where such agreements are contrary to the terms of the relevant award, both employees and employers remain exposed to prosecution for such things as working at the weekend (in the shearing industry) or agreeing on piecework rates without having received sanction of those rates from the relevant union (the Fruit Growing Award).

The practical implications of the above discussion are as follows:

- in the future the need for employers to win the hearts and mind of their employees will be greater than ever. If they can achieve this, substantial productivity gains can be achieved in some industries.
- facilitating greater competition in product markets is an essential ingredient to achieving effective competition between firms in the manner in which they engage and manage their workforce;
- another prevailing lesson is that no matter what the legislation may say, resort to the AIRC should be left to the last. If the AIRC is required to exercise discretion, the result is likely to be unpredictable. The problem is not so much the nature of the 'no disadvantage test' but rather who applies it, and how.
- while reform of the Australian labour market has been slow and haltering, some progress has been made. From the farm sector's point of view it is essential, and in the national interest, that further progress is made.

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