

Fair Work Act Review announced

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- Minister for Employment and Workplace Relations, Financial Services and Superannuation

The review of the Fair Work Act, first announced when the legislation was introduced, will be conducted by Reserve Bank Board Member John Edwards, former Federal Court Judge, the Honourable Michael Moore and noted legal and workplace relations academic Professor Ron McCallum AO, the Minister for Employment and Workplace Relations, Bill Shorten, announced today.

“I asked these three experts to conduct the review because they bring diverse experience and skills in working on workplace relations and economic matters in Australia and their ability to bring a new perspective to the debate,” Mr Shorten said.

John Edwards is a Visiting Fellow at the Lowy Institute, an Adjunct Professor with the John Curtin Institute of Public Policy at Curtin University, and a member of the Board of the Reserve Bank of Australia. From 2009 to 2011 he was Director for Economic Planning and Development for the Economic Development Board of the Kingdom of Bahrain. From 1997 to 2009, Dr Edwards was Chief Economist for Australia and New Zealand for the global financial group, HSBC.

Michael Moore was appointed to the Industrial Relations Court of Australia and the Federal Court of Australia in March 1994 and retired in July 2011. At the time of his appointment to the Federal Court, he was Acting President of the Australian Industrial Relations Commission, of which he had been a Deputy President and then Vice President. He was appointed a Presidential Member of the Australian Industrial Relations Commission in 1989. More recently, Michael has been an acting Judge in the NSW Land and Environment Court.

Professor Ron McCallum has written extensively on labour law matters and has taught Administrative Law, Public Law and labour law at the University of Sydney. Ron is the first totally blind person to have been appointed to a full professorship in any field at any university in Australia or New Zealand.

“The Government believes the *Fair Work Act* is working well, but there is always room for improvement and I am very pleased these three eminent Australians have agreed to lead the review. They are all highly respected and will bring the level of independence and objectivity required for a review of this nature.”

“We will of course continue to consult with employer organisations, trade unions, employees, workplace relations experts and peak bodies throughout the review period and beyond.”

The *Fair Work Act 2009* and the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* gave effect to the Government's commitment to restore fairness to the Australian workplace relations system.

"The Fair Work Act underlines a balanced system for good workplace relations – one that promotes national economic prosperity and social inclusion for all Australians. Real economic prosperity and growth requires fairness and security in the workplace. This review reaffirms the Gillard Government's fundamental commitment to these aims."

Due to the scale of the reforms, the Government made a commitment in the Explanatory Memorandum to the Fair Work Bill 2008 to review the operation of the legislation two years after it was fully implemented (that is, 1 January 2012).

"The Government believes very strongly in not only creating jobs but in ensuring the jobs that are created are good quality jobs, and where both employees and employers get a fair go all round at work, regardless of the size of the business.

"The review represents an important opportunity to have an evidence based discussion about the operation of the legislation and the extent to which its effects have been consistent with the Government's objectives."

The terms of reference also task the panel to examine areas where the evidence indicates the operation of the legislation could be improved, consistent with the objects of the legislation.

The panel has been asked to consider evidence from stakeholders and provide a report to Government by 31 May 2012. The attached terms of reference include further detail about the conduct of the review. Arrangements for public consultation and opportunities to present evidence to the review will be announced by the Panel shortly.

Mr Shorten calls on all stakeholders to participate in the consultation process and to make a constructive and considered contribution to the review process.

Attachment 1

Terms of Reference for the Fair Work Review

The *Fair Work Act 2009* (Fair Work Act) and the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* (together, the Fair Work legislation) gave effect to the Government's commitment to restore fairness to the Australian workplace relations system. In 2008 the Australian Government committed to monitoring the impact of the provisions of the Fair Work legislation through a post-implementation review (the review).

The review is to be an evidence based assessment of the operation of the Fair Work legislation, and the extent to which its effects have been consistent with the Objects set out in Section 3 of the Fair Work Act.

The review will examine and report on:

1. The extent to which the Fair Work legislation is operating as intended including:
 - the creation of a clear and stable framework of rights and obligations which is simple and straightforward to understand;
 - the emphasis on enterprise-level collective bargaining underpinned by simple good faith bargaining obligations and related powers of Fair Work Australia;
 - the promotion of fairness and representation at work;
 - effective procedures to resolve grievances and disputes;
 - genuine unfair dismissal protection;
 - the creation of a new institutional framework and a single and accessible compliance regime; and
 - any differential impacts across regions, industries occupations and groups of workers including (but not limited to) women, young workers and people from non-English speaking backgrounds; and
2. Areas where the evidence indicates that the operation of the Fair Work legislation could be improved consistent with the objects of the legislation.

The review will not examine those issues to be addressed as part of the review of all modern awards (other than modern enterprise awards and state reference public sector moderns awards) after the first two years as required by Schedule 5, Item 6 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*. That review is to be undertaken by Fair Work Australia in accordance with the requirements of that legislation and in accordance with Item 6(2) must consider whether the modern awards:

- a. achieve the modern awards objective; and
- b. are operating effectively, without anomalies or technical problems arising from the award modernisation process.

Evidence

The review will draw on a range of sources regarding the operation of the Fair Work legislation. Key evidence gathering activities to be undertaken in the conduct of the review include:

- the release of a background paper on the Fair Work legislation inviting stakeholders to make a submission to the review;
- meetings with key stakeholders/roundtable discussions to outline their experiences with the Fair Work legislation; and
- the commissioning of any additional quantitative and qualitative data that may be required.

Additionally, a wide range of qualitative and quantitative data will be drawn upon to measure the regulatory impact of the legislation, including from:

- the Department of Education, Employment and Workplace Relations' Workplace Agreements Database;
- the Fair Work Ombudsman;
- Fair Work Australia;

- the Australian Bureau of Statistics;
- evidence sources developed by stakeholders; and
- other relevant statistical sources.

The review will culminate in a comprehensive evidence based report which will draw conclusions about whether the legislation is meeting its objectives. The report will also include recommendations for any changes arising out of the review. The Office of Best Practice Regulation will assess the report to ensure that it meets the best practice regulation requirements for a review as outlined in the *Best Practice Regulation Handbook*.

The review is to report to the Minister for Employment and Workplace Relations by 31 May 2012.

Attachment 2

Biographies of Panel Members

John Edwards

John Edwards is a Visiting Fellow at the Lowy Institute, an Adjunct Professor with the John Curtin Institute of Public Policy at Curtin University, and a member of the Board of the Reserve Bank of Australia. From 2009 to 2011 he was Director for Economic Planning and Development for the Economic Development Board of the Kingdom of Bahrain.

From 1997 to 2009 Dr Edwards was Chief Economist for Australia and New Zealand for the global financial group, HSBC. In 2008 he was given leave of absence from HSBC to accept a secondment to the Australian Treasury as Chief Adviser, Financial Markets.

From 1991 to 1994 John was principal economic adviser to Treasurer and then Prime Minister, Paul Keating. In that role he had particular responsibility for international trade issues, labour market reform, and monetary policy.

Earlier in his career he was a political and economic journalist in Sydney, Canberra, and Washington.

After leaving Mr. Keating's office in 1994 John was an adviser at Macquarie Bank, and then Chief Economist for Société Generale in Australia, before joining HSBC.

He has published four books, including a narrative history of the MX missile program 'Superweapon' (Norton 1982) and an account of Australian economic policy making under the former Treasurer and Prime Minister 'Keating – the inside story' (Viking 1996). His most recent book is 'Curtin's Gift: Re-interpreting Australia's greatest Prime Minister' (Allen and Unwin 2005), an analysis of changes in Australia's economic framework in the Second World War.

He holds PhD and M Phil degrees in economics from George Washington University and a BA from Sydney University. In his doctoral dissertation he created and tested a model of the

Australian monetary policy mechanism to examine the impact of financial deregulation on the effectiveness of monetary policy.

Professor Ron McCallum AO

Professor McCallum AO was the foundation Blake Dawson Waldron Professor in Industrial Law in the Faculty of Law of the University of Sydney. Ron is the first totally blind person to have been appointed to a full professorship in any field at any university in Australia or New Zealand.

Professor McCallum has written extensively on labour law matters. Ron taught Administrative Law, Public Law and labour law at the University of Sydney at both the undergraduate and postgraduate levels. He has also taught labour law at the Osgoode Hall Law School at York University, Ontario Canada, and at Duke University, North Carolina United States of America. Before commencing teaching at the University of Sydney, he taught at Monash University from 1974 to 1992.

Ron was also the inaugural president of the Australian Labour Law Association, and he served in that role from February 2001 to November 2009. As President, in September 2009 in Sydney, he hosted the XIX World Congress of the International Society for Labour and Social Security Law.

In September 2003, Ron was elected as the Chair of Radio for the Print Handicapped of New South Wales Co-Operative Ltd which operates radio 2RPH, which reads out over the air newspapers and magazines for blind and for other print handicapped listeners. Since 2006, he has been a member of the Board of Vision Australia Pty Ltd, and in November 2006 he was appointed as one of the two Deputy-Chairs of this Board. Vision Australia assists blind and vision impaired people in Australia, but especially in the States of New South Wales, Victoria and Queensland, and in the Northern Territory.

On 3 September 2008, the Australian Government nominated Professor McCallum as its candidate for election to the inaugural United Nations Committee on the Rights of Persons with Disabilities. This Committee of Experts oversees the United Nations Convention on the Rights of Persons with Disabilities.

In early July 2010, Professor McCallum was appointed by the Governor of NSW, to the position of Chair of the Disabilities Council of New South Wales on an interim basis until 31 December 2010. This will enable the Government to advertise for, and to fill new positions on the Disability Council.

Honourable Michael Moore

In March 1994, Michael Francis Moore was appointed to the Industrial Relations Court of Australia and the Federal Court of Australia. He has been a Judge of the Supreme Court of the Australian Capital Territory since 2004 and the Court of Appeal of Tonga since 2006.

At the time of his appointment to the Federal Court he was Acting President of the Australian Industrial Relations Commission of which he had been a Deputy President and then Vice President. He was appointed a Presidential Member of the Australian Industrial Relations Commission in 1989. His Honour graduated from the Australian National University as a

Bachelor of Arts in 1971 and of Laws in 1974. After one year as a solicitor, he was called to the New South Wales Bar in 1976.