

Inquiry into the Workplace Relations Framework

A response from the Council of Small Business Organisations of Australia

One of the great concerns for the small business community is the cost of employing people, not just in time and money but also in increased levels of personal stress for the employer.

In small business the employer is very rarely an expert on workplace relations. Yet they are expected to be an expert in this area as well as an expert on workplace health and safety, insurance, workers compensation, leasing requirements, competition law and the list goes on.

Almost 90% of workplaces in Australia employ less than 20 people and over 60% employ less than 5 people. In 2012 that was almost 750,000 employing businesses, each run by a person or perhaps a couple.

Yet the workplace relations system is and always has been designed for paymasters, boards of directors and CEOs in the 10% of business – the largest businesses.

In the end the result of a confusing and expensive workplace relations is a negative impact on innovation, productivity and the economy. It is also a reluctance by small business people to employ or to grow their business to employ more people.

The current system is designed by experts for experts. The current system is also designed by ideologues to suit their ideology not reality.

The workplace relations framework is one designed by “the IR club” to suit their needs and beliefs not the reality of the modern workplace. It seems that there are two sides, the left and the right, and they take turns being in a position of influence, and deciding on what WPR looks like, or being in the position of little influence, where they get to attack the other side. They swap places at elections but the silliness continues and the pay clerks and experts deal with the changes as best they can while small business people are just confused. The left and right of WPR also tend to fight among themselves in public and private spats that do not help foster confidence in the system.

Work Choices and *Fair Work* are or were systems based on outmoded beliefs about the way the workplace should operate and behave. Big business or big unions were heavily involved in developing both these systems. They were designed by experts for experts. They continue to cause angst for the left and right of the IR club

We need to change this paradigm of influence. We need a system designed for the reality of the many not for the fears and beliefs of a few.

An Industrial Award for the Small Workplace

COSBOA knows that any successful workplace relations system will need to be designed for the small workplace. But if big business and big unions want to maintain complexity (for their experts to argue about) then maybe we could have a workplace industrial award just for small business? An award that is an option for any business that employs less than 20 people.

This award will have guaranteed rates of pay with simple descriptions of conditions, rights and responsibilities of the employer and the employee spelled out.

Employers and employees who are not experts, will then feel confident that they are paying and receiving the right pay. The current situation is too confusing and creates mistakes and conflict.

A real life example of the complex award system making trouble involves a small business owner who runs a convenience store. He sells groceries and take-away food. The award he is using covers all the workers in his shop.

One day he notices that many elderly people from a nearby aged care facility buy take away coffee and food from his shop and they have to stand around waiting for their order to be made. He provides a table and some chairs for the people to use while they are waiting.

Normally the customer would collect the food and coffee from the counter after their name is called out. This was until one of the employees started to take the order out to the older people. She does this out of the goodness of her heart as we should do for the older people in our community. All is good. Everyone is happy.

Then the employee leaves and in a conversation with a friend is told that she should have been paid more money as she was actually serving food to a table. She approaches the government workplace agency that forces the employer to pay many thousands of dollars of back pay.

This is of course ridiculous. The employer and the employee were both behaving like well-meaning caring human beings. The employer has now removed the offending table and chairs. The outcome is not good for the older customers, for the community or the employer.

A single award for this shop would mean that no matter what the employee does that the pay stays the same. No ambiguity, no fear of getting something wrong. No

conflict. No opportunity for trouble makers to make trouble. No need for an expensive and complicated enterprise agreement.

Under this proposal the minimum rates of pay for any employee in a small business would be the same and would not differ between businesses or industry sectors. An employer can always pay above the rates of pay in the small business award.

It is a new idea, a workplace relations system based on size not on industry; it will worry people, especially those in the “*IR Club*”. Now is the time to take complexity out of workplace relations and add certainty and flexibility. A small business award for the majority will work once the minority, “*the IR Clubbers*”, are dismissed from the debate.

The Regulator and Legislative Framework

Currently there are three players in the WPR space: the Fair Work Commission (FWC); the Fair Work Ombudsman (FWO); and the Australian Human Rights Commission (AHRC).

The FWC makes the rules under broad direction of Parliament. The FWC also regulates disputes, bullying and unfair dismissal claims.

The FWO regulates employers on other issues and provides information as best it can on wages and conditions.

The AHRC takes complaints about sexual harassment and discrimination and deals with them in their own system.

This means there are three websites, three organisations and three sets of processes and procedures that exists for employers and employees.

We need to change that to become more streamlined and less confusing. If there is a problem in the workplace there should be one website and one process that assists in resolving the issues. Too much time is spent trying to work out who to contact.

Selection of FWA Commissioners

The selection process for commissioners to the FWA needs to become much more transparent and much more competitive. Currently it appears that commissioners are selected by the government of the day based on advice from members of the IR club. There is also little information on the current commissioners to assist in determining which ideology they will favour when making a decision in a complicated issue. These commissioners will of course follow the law but whether we like it or not their ideology will have an influence somewhere.

Penalty rates

We believe in penalty rates as they have their place for those who work long hours or in different conditions but a community where a pharmacy has to close on Sundays is one that is not as healthy as it should be. A community where school kids don’t get to

earn extra money and learn about working life in weekend jobs is one where a complete education is not available to the next generation. A community where service stations have to close on Sundays and do not open past 9pm at night due to penalty rates is not a complete community.

The penalty rates are too high and the times when penalty rates become available are complicated and differ from industry to industry.

We believe that penalty rates should not exceed time and a half and should be applied consistently across sectors.

Minimum hours of work

The current situation where an employee has a minimum time of 3 hours or where the employer has to seek approval to employ a school student for less than three hours is not reflective of the real world. By all means if an employer is obviously abusing employees time by demanding long travel times for short periods of work where the cost of getting to work makes the time spent at work not rewarding then fix that problem. Let the employee contact the regulator and have them sort that out.

But if a small business employs a school student after school for a short time than it is obvious this is acceptable and there should be no need to seek approval.

A minimum of one hour for people under 20 years of age who are in full time education should be a simple enough rule for employers.

There is no proof that many employers abuse the system, the workload for the regulator would be minimal.

The minimum wage

COSBOA believes there should be a minimum wage. The removal of a minimum wage would create too much hostility and create uncertainty for employees.

The future framework

COSBOA recommends a framework based on the needs and capacity of the small workplace, this would involve:

- Simplicity for ease of understanding for employers and employees

- Transparency so that is obvious what a clause is meant to do

- Highlighting the need and importance of a fair days pay for a fair days work

- Recognition that a business must be viable to employ people and that viability is based on the capacity for the business owner to also make a fair living for his or her effort, and a return on the investment in the business and a return and reward for the risk taken.

- One regulator with easy to use systems and easily accessed and understood communications processes

There are other issues that are not given enough consideration. For example workplace relations processes is having an effect on competition in the retail sector.

Currently Coles and Woolworths are the biggest employers in Australia and the Shop Distributive and Allied Employees' Association (SDA) is the biggest union in Australia.

The SDA has over 90% of its members in Coles and Woolworths. Interestingly the SDA led the call for high penalty rates on Sundays, successfully having a national wide penalty rate of double time implemented. Then the SDA negotiated an enterprise agreement with its associated large employers which provided a rate of time and half on Sundays.

The outcome of this is that small businesses close on Sundays and other days when penalty rates are high. The large business do not close as their costs are lower on those days. The large businesses get a bigger share of the market and the SDA gets more members. That is an outcome that should not have occurred under a fair workplace relations system.

COSBOA.