



Submission to Australian Productivity Commission

Workplace Relations Framework.

Introduction

This submission to the Australian Productivity Commission Review of the Workplace Relations Framework is presented by the Busselton Chamber of Commerce and Industry (BCCI). Busselton is a regional City located some 220 kilometres south of Perth and is the principal tourist destination outside Perth. It is also a growing regional City with a consistently high population growth rate exceeding 4% per annum and within the next seven years is forecast to be the largest regional city in Western Australia.

While the comments in this submission will have a heavy emphasis upon the tourist sector they do have implications for our business community in general. The local economy is dominated by the tourist industry, vineyards and wine production (encompassing the Margaret River Wine Region), general agriculture and Busselton is the principal fly-in-fly-out base for the Pilbara resources industry outside Perth. Not only is Busselton a primary destination of choice for much of the residential development, its growth is also heavily influenced by the FIFO operations.

The BCCI represents some three hundred businesses that operate in this area. While all terms of reference have some implications on business activity in this region, there are several that will be directly considered.

- fair and equitable pay and conditions for employees, including the maintenance of a relevant safety net
- small businesses
- productivity, competitiveness and business investment
- the ability of business and the labour market to respond appropriately to changing economic conditions patterns of engagement in the labour market
- the ability for employers to flexibly manage and engage with their employees
- barriers to bargaining
- red tape and the compliance burden for employers

Industry Implications

We are the principal tourist destination outside Perth. Our annual tourist visitation numbers exceed 600,00 per annum, with each tourist staying on average 3.4 nights. Much of this visitation occurs around weekends and regular seasonal activity of summer, Easter, long weekends and school holidays. As a primary tourist destination it is imperative that we cater for the tourist market as well as the changing expectations of our own community, which ultimately requires our tourism, hospitality and retail sector businesses, many of which are deemed small, to be open. Unfortunately, the Australian Industrial relations system still

operates in a business environment whereby the working week norm was Monday to Friday 8.30 am to 5.00pm, with undue penalties for weekend and public holiday work.

Penalty rates are restricting opportunities for businesses to maximise their financial return while at the same time limiting employment opportunities. A fair and equitable wage rates for weekend work is not disputed but payment of wages at a rate of up to three times that paid during Monday to Friday is not equitable. Conversely, it can be argued that value of work during penalty periods is not equitable for those who only work during the normal working week. Why is it that the value of an experienced employee working during the normal working week is deemed to be less than for an employee working at overtime and penalty rates.

Changing Business Environment

Much of this is also occurring at a time when the business environment is changing and subject to greater international competition. The transition in retail trading hours to much more flexible arrangements is making it easier to do business by allowing retailers to open, in some cases 24/7, but at least in many situations for up to 13 hours per day. However, the industrial relations system is placing an undue burden on business by retaining inappropriate penalty conditions more befitting the earlier time period mentioned. Similarly, retailers are subject to online competition which knows no time or penalty boundaries. Indeed the Australian Productivity Commission in its review:

“ Economic Structure and Performance of the Australian Retail Industry: Inquiry Report “ released in December 2011 commented that “Retailers operate under several regulatory regimes that restrict their competitiveness and ability to innovate. Major restrictions which need to be addressed are:

- planning and zoning regulations which are complex, excessively prescriptive, and often anticompetitive
- trading hours regulations which restrict the industry's ability to adapt and compete with online competitors and provide the convenience that consumers want.

The retail sector has had to rapidly transition to an environment that is deliberately, through regulation or legislation, or by default, through internet competition or customer expectations, removing barriers to trading conditions but is hamstrung by penalty rates that make it too punitive to operate.

The inherent inflexibility in our current system, either inbuilt in awards or agreements, is still dictated by the dispute culture and adversarial process on which it is predicated. An effective system must move from that basis to a more collaborative approach, recognising the need to retain minimum protection for employees and employers. While some of this was encapsulated in previous terminology under so called “no-disadvantage-clause”, a more effective way should be to consider a “better-off-overall” agreement. Minimum standards can be retained but within the context of greater flexibility and relevance to individual workplaces. Legislative changes since 2009 have tipped the balance in favour of employees to the disadvantage of employers. This correction needs to be made.

Despite the presence of enterprise bargaining over the last decade and half, there has been little uptake as they are still subject to centralised regulation and complexity. The theory is acceptable, the practice is not. For a small business to be able to undertake this process it is still far too time consuming, with much of the flexibility removed by the involvement of third parties. We refer to small business on this occasion as those businesses employing up to ten people, which is much of what our local workforce is, although the constraints also relate to those above this threshold. Similarly, enterprise agreements still heavily reflect the

traditional award structure, so the opportunity for flexibility and terms and conditions relating to individual business operations cannot be effectively incorporated.

I referred earlier to the tourism and hospitality sector but these conditions also apply directly in this region which has a very significant wine industry sector. At certain times of the year there are needs to work outside deemed “normal working hours”. This is particularly so during vintage and vineyard maintenance times. The wine industry has battled with working arrangements for many years over flexible working arrangements, the need to have work completed at “non-traditional” working times, exorbitant penalty rates, and incentive payments. Any effective working agreement needs to take all of these factors into account

Small Business Award

The very nature of small business in today’s environment often precludes the individual workplace arrangements being covered under one award. There are instances whereby a single enterprise could be subject to multiple awards which makes employee management an unnecessarily complicated issue. The situation applies when an employee is engaged for one role but during a working day/ working week may perform another roles which would be covered by a different award/agreement. Variations between working arrangements may only be minor but do raise concerns with respect to differing terms and condition, management of those changes, record keeping and pay rates etc.

Commonwealth /State Jurisdictions

In Western Australia we continue to operate under separate Commonwealth and State systems. The BCCI advocates that the State system hand over all workplace arrangements to the Commonwealth thereby having one system of coverage and compliance and to remove the ongoing confusion for employers over the difference of Commonwealth/State jurisdictions.

While Victoria is the only State to have gone down this path, it is difficult to envisage that the Commonwealth or several of the States would have the fortitude to make the same change in the context of the current political climate. It is timely that the Australian Productivity Commission review this issue to ensure that Australia generally has the most effective workplace engagement system that reflects business and workplace arrangements for the 21st Century.

Please note: A case study is available if required.