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Workplace Relations Inquiry

Productivity Commission

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CANBERRA CITY 2601

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**Inquiry into the Workplace Relations Framework****Submission from the Australian Newsagents Federation Ltd (ANF)**

The ANF welcomes this opportunity to provide further feedback on the Workplace Relations Framework Draft Report from the Productivity Commission.

We have chosen to only comment on some specific recommendations in the draft report and to provide additional information where we can, rather than a more general commentary. Overall though, we were very pleased with the approach taken and balance achieved by the Productivity Commission in analysing this complex and important issue.

**DRAFT RECOMMENDATION 4.2**

Agree, public holiday penalty rates and paid time off should be available for the public holiday expressly named in the National Employment Standards, to avoid the situation where election promises cost State economies billions of dollars.

**INFORMATION REQUEST - Chapter 6 P.47**

Casual workers exchanging part of their loading for entitlements such as personal/carer's leave - We feel that this is impractical because keeping track of which casual worker is

entitled to what forms of leave would impose an unreasonable administrative burden on small businesses.

#### **DRAFT RECOMMENDATION 5.1**

We feel this recommendation is impractical, as frequently it is impossible for the Commission member to discern what actually happened without hearing evidence. This will only lead to applications and employer responses needing to be much more comprehensive than is currently the case, to the point of practically needing to be written submissions. This will significantly increase the cost to small businesses of unfair dismissal claims.

#### **DRAFT RECOMMENDATION 5.3**

We agree, especially in small to medium sized businesses where by the time an employee has been dismissed, the relationship has usually broken down beyond the point of repair, and reinstatement is an impractical response that punishes not just the business, but colleagues as well.

#### **DRAFT RECOMMENDATION 5.4**

If the Small Business Fair Dismissal Code is removed, what remains for small businesses? What help will be offered to businesses to comply with legalistic and complex unfair dismissal provisions?

#### **DRAFT RECOMMENDATION 6.4**

We agree, currently claims regarding a dismissal that is adverse action are uncapped, and this, combined with the reverse burden of proof for these claims, means that most employers have a strong commercial imperative to settle claims, no matter how trivial, vexatious, or misconceived, in order to avoid the damage to the business caused by focussing on a claim to the detriment of the future of the business.

#### **INFORMATION REQUEST - Chapter 9 P.50**

We are of the view that age is clear cut, whereas if an employer were to have to judge competency or experience in order to determine what to pay a junior employee, this could lead to expense (potentially having to assess competency by a qualified assessor) or confusion (would experience in a butcher's shop be counted as experience for the purpose of

working for a newsagent?). While age can be quite a crude tool to use to determine worth to the business, it is a reasonable analogy for experience and maturity.

#### **DRAFT RECOMMENDATION 12.1**

A full review of each modern award is complex and time consuming. Currently the process seems to be taking in excess of two years, which is ridiculous because the Commission, employer associations and unions are spending half their time reviewing awards. Regular reviews are necessary, but maybe every 6-8 years, instead of every four years.

#### **DRAFT RECOMMENDATION 14.1**

We strongly support the realistic and balanced approach taken by the Commission in this recommendation.

#### **INFORMATION REQUEST – Chapter 14 P.532**

We support a broadening of the scope to use preferred hours causes in Awards – This would increase flexibility and the ability for an employer to take into consideration an employee's preferences when rostering hours.

#### **INFORMATION REQUEST – Chapter 15 P.563**

Pattern bargaining in an industry dominated by small businesses that have no human resources expertise on staff, can be a cost effective way to deliver an enterprise agreement that enhances the ability of employers and employees to agree to terms and conditions of employment that focus on the needs of the specific employers, rather than a broad based industry as a whole.

#### **DRAFT RECOMMENDATION 15.3**

We agree, when an agreement is made, it is much better to have certainty for a longer period of time, so five year agreements are preferable to four year agreements.

#### **DRAFT RECOMMENDATION 15.4**

We strongly agree, the No Disadvantage Test is better for encouraging enterprise bargaining than the Better off Overall Test, which is a higher bar, and has the potential to stifle bargaining where the outcome may well be better flexibility and productivity.

**DRAFT RECOMMENDATION 16.2**

We agree, the more guidance an employer has on what was in the legislator's minds the better, because ultimately, especially with new legislative provisions, employers are left to guess at what was meant, and hope they don't end up being a 'Test Case' to allow the courts to work out what is OK.

**DRAFT RECOMMENDATION 16.3**

We agree, this would be very helpful for all small businesses to be able to be better educated on the use of these flexibilities.

Thank you for considering our comments on these important issues.

Yours sincerely,

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