

Submission:  
Productivity Commission inquiry into  
the Workplace Relations Framework

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## INTRODUCTION

### ABOUT JOBS AUSTRALIA

Jobs Australia is the national peak body for non-profit organisations that assist unemployed people to get and keep jobs. The network helps members to make the most effective use of their resources to promote the need for services and support that will help unemployed people to participate fully in society.

We provide an independent voice for members who range from large charitable organisations to small local community-based agencies. Jobs Australia is the largest network of employment and related service providers in Australia and is funded and owned by its members.

### COMMUNITY SECTOR INDUSTRIAL RELATIONS

Jobs Australia's Industrial Relations team provides support to Jobs Australia Members and to other community-based organisations that are subscriber members of the Community Sector Industrial Relations (CSIR) service.

Through this area of our work, Jobs Australia provides industrial relations advice and representation for employers across the wider non-profit community services sector. We assist community sector employers in all areas of employee relations and human resource management, including award compliance, negotiating enterprise agreements, equal opportunity, dealing with industrial disputes, unfair terminations, and workplace change.

### ABOUT THIS SUBMISSION

This submission reflects Jobs Australia's experience and expertise from its full range of member services. This submission does not address every question raised in the Commission's Issues Papers. Rather, we have sought to target our responses to those issues in which Jobs Australia has the greatest interest and expertise to offer.

Our submissions are numbered in accordance with the relevant Issues Paper and section to which we are responding.

In Section 2.2 we deal with the issue of safety nets. As a peak body for organisations that provide assistance to unemployed Australians, we take a strong interest in the development of policies that reduce unemployment, while our work with community sector organisations as employers provides us with insights into the operation of the industrial relations system and how it affects employers.

In Sections 1, 2.4, 3 and 4, from our industrial relations work with employers across the full range of non-profit community services, we make submissions regarding the workplace relations framework as it affects employers in that particular sector of the economy.

# 1. CONTEXT

## Introduction

Jobs Australia makes the following response to Issues Paper 1 from the perspective of employers in the not for profit community services sector. These employers include a wide range of organisations which deliver employment, social welfare, disability, community development and other social assistance services.

The sector is largely award reliant. Substantial evidence regarding the characteristics of the sector was presented by various parties during the SACS Equal Pay Case<sup>1</sup>. The evidence in this significant case shows that this large and growing sector of the Australian workforce is employed with conditions on or close to the award safety net. Where enterprise bargaining occurs, the agreements provide pay and conditions which are also close to the award standard. Issues Paper 1, at Figure 1.2 presents a projection showing substantial growth between 2013-2018 in the proportion of workers engaged in community and personal service work.

The sector is very exposed to any change in the workplace relations framework because it has an award reliant workforce. Since 2006, legislative and other industrial changes that have affected the sector have included:

- The “Workchoices” changes to the *Workplace Relations Act*, and in particular the reliance on the corporations power. For many non-profit community organisations this created significant confusion about the application of federal and state awards, since their status as constitutional corporations was often unclear.
- The *Fair Work Act (2009)* which introduced further major change to the safety net, including the NES and awards. The interaction between enterprise agreements and awards was also affected.
- Referral of industrial powers by various states to the Commonwealth. This had the effect of moving any nonprofit community organisations which had remained in state jurisdiction following “workchoices”, into the federal jurisdiction, except in WA.
- Award modernisation and the accompanying transitional process.
- The SACS equal pay case and the resulting Equal Remuneration Order which has a transitional process affecting pay rates that operates to 2020.

In the context of the constant change to the framework, feedback from our members is that further major change should be avoided. For the most part, employers in the sector do not view the workplace relations system as a major problem (apart from some specific challenges for workforce strategy arising in the context of the National Disability Insurance Scheme). While incremental fine tuning should be an ongoing process, the transition and compliance costs associated with major change to the workplace relations system are likely to outweigh any benefits in this growing sector of the Australian economy.

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<sup>1</sup> [2012] FWA FB 5184, *Equal Remuneration Case*



## 1.1 THE STATED OBJECTIVES OF AUSTRALIA'S WORKPLACE RELATIONS SYSTEM

***The Commission encourages stakeholders to give their views on the appropriate objectives of the WR system, how these can be balanced and their capacity to adapt to future structural change and global economic trends.***

In light of the comments above regarding the desirability of minimising change, we consider the current objectives of the FWA to be appropriate.

The collective bargaining objective at Section 3 (f) has less relevance for the non-profit community sector, and we make further comments about the bargaining system in response to 3.2 of the Issues Paper.

## 1.5 THE COMMISSION'S APPROACH

***1.5 What are the biggest risks from changing the present WR system and how could these be moderated or avoided? What are the likely transitional costs associated with worthwhile reforms?***

Jobs Australia is not proposing major change to the workplace relations framework. We support incremental change in a number of areas, as we outline elsewhere in this submission. However, the nonprofit community services sector is under-resourced and predominantly consists of small to medium employers. The transition and compliance costs of recent changes such as award modernisation have been considerable and we advocate that there now needs to be a period of stability in the system.

## 2. SAFETY NETS

### 2.2 THE FEDERAL MINIMUM WAGE

Jobs Australia welcomes the approach that the Productivity Commission (PC) has taken to the discussion of the minimum wage, and in particular the PC's framing of the minimum wage discussion in a broader policy context. Too often, the debate around the minimum wage revolves around whether and how minimum wages affect the rate of employment, when the discussion needs to take into account other policy settings, such as welfare policies and taxation.

#### PURPOSE OF MINIMUM WAGES

***What is the rationale for the minimum wage in contemporary Australia? How effective is the minimum wage in meeting that rationale? To what degree will the role and effects of the minimum wage change with likely future economic and demographic developments?***

While this question could (and will, no doubt) be discussed at length, Jobs Australia has chosen not to go into great detail on this question. Our approach to this submission, however, assumes that the purpose of the minimum wage is: *to ensure that workers with little bargaining power are guaranteed a fair minimum rate of pay, with that rate set on the basis of an appropriate, basic standard of living for a hypothetical worker who earns the minimum hourly rate through a standard working week.*

This is largely consistent with the original basis for the minimum wage and also with at least some of the objectives stated in the *Fair Work Act 2009*<sup>2</sup>. Note that we do not assume that the rationale for the minimum wage is to reduce poverty, for instance, or to ensure a family with one 'breadwinner' can get by. The minimum wage would not meet such a rationale, because, as the PC has pointed out in Issues Paper No. 2, the poorest households in Australia have no breadwinners at all, while the one-breadwinner-family is becoming a rarity.

#### EFFECTS OF MINIMUM WAGE ON HOUSEHOLDS

***What are the effects of minimum wages on different households, taking account of direct and indirect wage and price effects, and the tax and social transfer system?***

Most of the debate around impacts of a minimum wage focuses on the impacts of an *increase* to the minimum wage on labour *demand*. Jobs Australia would like to point out, however, that careful thought needs to be applied to the impact that a *downward* move in minimum wages could have on labour *supply*.

All else being equal, a downward shift in the minimum wage would reduce the incentive to work for people who are currently unemployed by reducing the additional reward available. If the reduction

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<sup>2</sup> Section 284

were small enough, the effect may be negligible but if the reduction were large – for example, if small reductions had a large cumulative effect over time – then there is little doubt that some people will simply not bother looking for employment<sup>3</sup>. The combined impact of welfare taper rates, taxation, costs associated with working (such as travel, child care, work clothes) and a low rate of pay would mean that for some, work would no longer provide sufficient financial reward. The incentive to take up part-time work would be especially muted<sup>4</sup> – for example, people with a disability who face extra costs (such as travel costs) and have only a part-time work capacity may find it actually costs them *more* to take up a job than to remain on welfare.

In our view, a reduction or removal of the minimum wage would inevitably lead to lower participation rates, as more people find that work simply does not pay enough. That would then create pressure to reduce the already dismally low rates of welfare payments, in a bid to ensure that people who are unemployed continue to have a strong incentive to work. But once the impact of a downward shift in wages is combined with a downward shift in welfare payments, reduced consumer demand across the economy would be inevitable. Pushing down wages and conditions and welfare entitlements would lock us into a job destroying, low-growth trajectory.

Of course, the abolition or reduction of the minimum wage could be combined with a new welfare payment to offset the impact, such as an ‘earned income tax credit’ or a ‘guaranteed basic income’. This will be discussed further in response to the PC’s specific questions on those proposals. However, it is worth pointing out here that a reduction in the minimum wage, offset by a new welfare payment, constitutes a transfer of the burden of the minimum wage from employers (and consumers, since employers pass on their costs in prices) to government (ie: taxpayers) - and taxes may need to rise to pay for it.

## IMPACTS OF MINIMUM WAGES ON EMPLOYMENT

***What are the impacts of minimum wages on employment as a whole, and on particular groups of people (by age, skill, education, gender, and location, among other things)? How robust is the evidence? Are zero or positive employment effects from minimum wages for low-skill workers plausible for the industries in which minimum wages predominate, and if so why?***

Jobs Australia agrees with the Commission’s assessment that the standard, perfectly competitive labour market imagined in economic theory implies that a high (binding) minimum wage would reduce employment. We just do not believe such a labour market exists.

Like most markets, real-world labour markets are imperfect. Individual workers do not change jobs as soon as another job becomes available at a slightly higher rate of pay, for example, as they would in a perfectly competitive world. If labour markets were perfectly competitive, there would be no skill

<sup>3</sup> Bodsworth, E. 2010, ‘Making Work Pay and Making Income Support Work’, Social Policy Working Paper, Borthershood of St Laurence and the Centre for Public Policy, University of Melbourne

<sup>4</sup> Dockery, A.M., Seymour, R. and Ong, R. 2010, ‘Life on the Minimum Wage in Australia: An Empirical Investigation’, *Australian Journal of Labour Economics*, vol. 13, no. 1, pp. 1-26

shortages, no discrimination, complete equality of pay and conditions for women, no regional labour market disparities (because everyone would willingly move to wherever the jobs are) and vacancies would never take a long time to fill (because candidates would have perfect knowledge of the vacancies as soon as they existed).

In the real world, however, people who are happy in their job may not be looking for a new job and may not be aware of vacancies or the opportunity to move to a higher-paying position. Moving to a new job may involve financial costs, such as the cost of relocation - including buying / selling a residence or paying out a lease, etc. Family and community ties can also make moving for work a difficult proposition (kids at school, partner's work situation, ties to other family members, ties to community or religious groups, etc, all come into play).

Other economic models, such as the 'dynamic monopsony' model, are a better fit to the reality of labour markets, including in Australia<sup>5</sup>. According to that model, an increase in minimum wages can have a positive effect on employment<sup>6</sup>, just as studies have shown has occurred in certain real-life situations<sup>7</sup>.

#### EXAMPLE: HOW A MINIMUM WAGE CAN HAVE A POSITIVE EFFECT ON EMPLOYMENT

*"Although not monopsony in the strictest sense, monopsony power can be exercised by any employer that faces an upward sloping supply curve for labor. A single employer in a nominally competitive labor market can have monopsony power over his current workforce if workers bear a cost of job change, pecuniary or non-pecuniary.*

*"In this case the wage paid to existing workers may be lower than the wage required to hire reasonable numbers of new workers. For example, a firm may be paying its existing 1000 workers \$10 per hour but the competitive market wage to hire new workers is \$11 per hour. It is entirely possible that the marginal revenue product of labor is greater than \$11 per hour (say \$12), but the firm will not be willing to hire more workers if it has to pay all workers the same wage. In this example, the marginal cost of hiring an additional worker is \$1011 (\$11 for the new worker and \$1 for each of the 1000 existing workers). This clearly dwarfs the marginal revenue product of \$12 per hour.*

*"The existence of monopsony power raises the possibility that institutions that raise wages (for example, labor unions or minimum wage legislation) can, in fact, increase employment. Consider, for example, a labor union that has organized the firm described in the previous paragraph with monopsony power over its workers. Suppose this union is able to negotiate a wage of \$11.50. The firm will pay the higher wage and hire more workers. This is because the marginal cost of labor in the relevant range is now \$11.50 while the value of marginal product of labor remains at \$12. The key is the firm has to pay the higher wage to its existing workers, regardless of whether or not it hires more workers. The wage increase for existing workers is not a marginal cost. An increase in the minimum wage works in precisely the same way."<sup>8</sup>*

<sup>5</sup> ACTU 2014, Submission to the 2013-14 Annual Wage Review

<sup>6</sup> Ashenfeler, O.C., Farber, H. and Ransom, M.R. 2010, 'Modern Models of Monopsony in Labour Markets: A brief Survey', IZA Discussion Paper No. 4915, IZA, Bonn, Germany

<sup>7</sup> Card D. and Krueger A. 1994, 'Minimum Wages and Employment: A Case of the Fast-Food Industry in New Jersey and Pennsylvania', *American Economic Review*, vol. 84, no. 4, pp. 772-793

<sup>8</sup> Ashenfeler et al 2010, pp. 3-4



Looking at the research on real-life effects of minimum wages on employment, there are numerous reviews and Jobs Australia will leave it to other submissions to reel off the hundreds of studies on the topic, but it seems that minimum wage adjustments have either a very small negative impact, a very small positive impact, or zero impact on employment levels. For low-skill workers with little experience (particularly younger workers), the evidence tends to show a small negative impact on employment<sup>9</sup>.

The question, really, is whether a potential (and contestable) small negative impact on employment is an acceptable trade-off for equity and other gains accruing to low-paid workers. In our view, it is – provided that other policies, such as concessional wages (youth wages, training wages), active labour market programs (such as Work for the Dole, relevant training) and wage subsidies (such as those available for the long-term unemployed) make up the difference for those who are disadvantaged by the minimum wage.

#### IN WORK BENEFITS / TAX CREDITS

***Are there grounds for an in work benefit, taking into account their social and distributional impacts, effects on employment and economic efficiency, risks, administrative requirements, and compliance costs?***

As noted by the PC, in-work benefits such as Earned Income Tax Credits are part of the policy mix in many OECD countries, including the US.

There are two basic approaches to this kind of payment. The first is a targeted approach, where access to the benefit is restricted to low income earners; the second is a universal approach, where everyone is provided a payment as a 'basic income' or 'minimum guaranteed income'.

The appeal in either approach is that there is no binding wage floor and the market is free to find the equilibrium price of wages. That avoids even the possibility that the wage floor might cause an increase in unemployment. Equity issues are then dealt with through the government-funded payment, so that people can get by even if the market has set the price of their labour at a rate that is too low to survive.

A universal payment also has other appealing features. Because the payment is universal, there is no need for complex eligibility rules or bureaucratic assessments; there are no taper rates to create disincentives associated with high effective marginal tax rates when welfare payments taper out as earnings increase; and because it is universal, there is a basic fairness in that everybody gets exactly the same level of support. Progressive income taxation then takes care of other equity considerations. Milton Friedman was a supporter of this type of payment, which he described as a 'negative income tax', as a replacement for complex, targeted welfare arrangements<sup>10</sup>.

<sup>9</sup> For example, Leigh, A 2007, 'Employer Effects of Minimum Wages: Evidence from a Quasi-Experiment', *The Australian Economic Review*, vol. 36, no. 4, pp. 361-73

<sup>10</sup> See, for example, <https://www.youtube.com/watch?v=xtpqkX58nM>

A targeted payment, such as an earned income tax credit, would still need to have eligibility requirements and associated administrative arrangements, and would still create the usual disincentives associated with welfare payments that taper out as income increases.

Jobs Australia supports investigating how an in-work benefit might work in the Australian context, but either model could be expected to be a very large expense to the Federal Budget and many other policy settings in the tax and transfers system would need to be adjusted to accommodate it. Obviously the universal model, though more appealing for its simplicity, would be more expensive. Convincing the public that everyone needs to pay more tax so that it can be handed back to everyone as a welfare payment would be no small task.

It is also important to consider the efficiency of the taxes that might need to be raised to pay for in-work benefits. There may be an efficiency gain from the removal of the minimum wage, but if it requires increases to inefficient taxes then the 'solution' may actually increase the overall cost to society.

Moreover, there is a question about who should bear the burden of adjustments in the safety net. In essence, employers – who, at the bottom end of the labour market, hold all the power in the employer-employee relationship – would be able to pay their workers less and have the taxpayer pick up the tab for the social and economic problems that lowering their pay would otherwise create.

Under the current minimum wage arrangements, small adjustments in the minimum wage to take account of rising costs of living currently impose additional costs to employers, who then have to make choices about how much of the wage increase they absorb and how much they pass on to their consumers through price adjustment. It can be expected that some of the increase will flow through to consumers – but some of it will also be absorbed and reduce company profits. In a system where in-work welfare payments are used to ensure workers can get by, however, the burden of any adjustment to take into account of rising costs of living falls entirely on taxpayers.

More detailed analysis (and modelling) would be required to establish whether any specific proposal was better or worse than the current system, but in our view, there is a strong case for sticking with the minimum wage system.

## 2.4 THE AWARD SYSTEM AND FLEXIBILITY

The Issues paper raises a number of options for further change to the award safety net and seeks feedback on those issues.

As we have commented elsewhere in this submission, the non-profit community services sector is largely award reliant. Our observation is that employers in the sector, particularly those that are of small to medium size, generally rely on the award system to do exactly what the modern award objectives set out (s 134 (1), Fair Work Act). There is general support in the sector for existing safety net standards. Indeed an erosion of the safety net is likely to exacerbate the significant recruitment and retention problems that many employers in the community services sector face.

Our view is that for this important and growing sector, major change to the modern award system is not desirable. However, consistent with the rest of our submission we do advocate ongoing monitoring and fine tuning of the system.

We draw attention to the objective set out at s134 (1) (d) of the Act, which refers to the need of the modern award system to provide a fair and relevant safety net, taking in to account....*the need to promote flexible modern work practices and the efficient and productive performance of work.*

The current 4 yearly review of modern awards will be an opportunity to test whether that objective is capable of being met, and whether the 4 yearly review is an effective process.

Employers engaged in the provision of disability services are currently faced with a radical overhaul of their work with the implementation of the National Disability Insurance Scheme (NDIS). NDIS has bipartisan support and promises to significantly change for the better the lives of large numbers of people with disabilities. However, in this award reliant sector, the ability of employers to engage workers in ways that meet the need for flexible service delivery under NDIS is necessarily constrained by the relevant modern award, the *Social, Community, Home Care and Disability Services Industry Award 2010* (SCHADS).

The provisions of SCHADS that relate to disability support workers reflect award provisions developed in the 1980s and 1990s in the context of institutionalised service delivery. They do not reflect the new environment of individualised control by people with disability over how their supports are provided, far less the technological realities of the twenty-first century and the move away from institutionalised approaches towards greater supports in the home and the community.

The task for employers operating under NDIS is made more difficult by a pricing structure imposed by government (through NDIS) which currently does not adequately recognise the cost of current award entitlements. This creates a temptation for employers to seek to undermine current employment standards, including award entitlements, and increase the casualisation of the workforce. However, this is ultimately an unsustainable approach for a sector that needs to double its workforce over the next five years while raising skill levels and ensuring high standards of service delivery. It simply transfers the consequences of inadequate pricing onto the workforce and undermines "*efficient and productive performance of work*".

Jobs Australia is optimistic that the 4 yearly review is an opportunity to develop award provisions that better facilitate "*flexible modern work practices*" in this sector which will meet the needs of employers, employees and clients. Our view is that there is scope for improved flexibility that does not undermine the current safety net. However, it remains to be seen whether or not our optimism is warranted.

We submit that the 4 yearly review of modern awards needs an opportunity to do its work, and we suggest that the review of the *Social, Community, Home Care and Disability Services Industry Award 2010* might be one of the awards that will provide a test of the effectiveness of the process in meeting the modern awards objectives.

## 3. THE BARGAINING FRAMEWORK

### 3.2 TYPES OF ENTERPRISE BARGAINING AND THEIR KEY PROCESSES

***Clearly, some processes are important to enable efficient bargaining, but it is an open question whether there should be changes to processes to meet the objectives set out in the first Issues Paper. The Commission seeks stakeholders' views.***

#### MULTI-EMPLOYER BARGAINING

Jobs Australia has significant experience in negotiating multi-employer agreements (MEAs) in the non-profit community services sector. These include 3 agreements that between them cover around 250 neighbourhood houses and learning centres in Victoria, and current negotiations for an agreement anticipated to cover around 20 employers in community services in the ACT.

Multi-employer bargaining is well suited to some parts of the community sector, because the sector generally:

- Has a culture of collaboration between employers to achieve common goals
- Competition motivated by profit is absent
- To the extent that employers compete for funding and clients, it is generally not on the basis of labour costs, since employees are mostly employed on or near award safety net conditions
- Small to medium sized employers lack resources for bargaining and multi-employer bargaining is an efficient means to develop conditions tailored to the needs of the sector.

The *Fair Work Act* imposes tight timelines for employers in relation to the approval process for agreements. Many small to medium non-profit community organisations are governed by volunteer management committees and boards which commonly meet on a monthly basis.

The current requirement that an agreement must be lodged with FWC for approval within 14 days has proved to be extremely difficult to meet. In one case, an MEA intended to cover about 230 neighbourhood houses in Victoria, over 20 employers were unable to meet the tight timelines required by the Act due in part to the timing of management committee meetings. There was never any suggestion that those employers had not genuinely reached agreement with their employees, but FWC had almost no discretion within the Act to accommodate the logistical difficulty of coordinating bargaining process across a large number of small employers.

**We recommend that the Act be amended to provide for a 4 week timeframe for lodgement of a multi-employer agreement for approval by FWC.**

#### PRODUCTIVITY

***The Commission seeks feedback on practical options in this area, and why they are needed within the current bargaining process. In particular, why are there not already sufficient commercial incentives (and competitive pressures) for parties to improve productivity, either as a commitment under an enterprise agreement or during the normal operation of the enterprise?***



Productivity is clearly an important objective. However we challenge the assumption that the workplace relations system is a key driver of productivity across all industries. We submit that for the non-profit community services sector, the workplace relations system has little effect one way or the other on productivity, other than in relation to minimum wage costs and penalty rates.

The Productivity Commission has previously examined the not-for-profit sector<sup>11</sup> and considered key challenges regarding productivity. Workplace relations did not rate a mention, other than in relation to low pay acting as an impediment to recruitment and retention of employees. Some of the productivity and innovation challenges that were identified included:

- Government contracts requiring return of surpluses, and imposing inappropriate constraints on management discretion, providing little incentive for cost saving
- Better utilisation of Information and Communication Technology
- Under-resourcing for infrastructure
- Instability of funding, lack of funding for market competitive wages, and funding indexation that does not keep pace with real wage growth
- Lack of governance skills

We submit that none of these actual productivity challenges are capable of being addressed in any significant way by enterprise bargaining. This is not a sector that has restrictive work practices capable of being bargained away in exchange for pay increases.

## 4. EMPLOYEE PROTECTIONS

### 4.3 ANTI-BULLYING LAWS

***What are the impacts, disadvantages and advantages of the anti-bullying provisions of the FWA for employers and workers?***

***Are there any unintended consequences of the anti-bullying provisions?***

Jobs Australia supports the move to provide better protections for workers against bullying in the workplace. Our initial anecdotal observations are that the new jurisdiction has operated with a balanced and pragmatic approach to claims of workplace bullying.

Our main concern relates to the risk that managers face of claims of bullying being made in response to straightforward performance management or disciplinary processes. Front line managers should be held accountable for how they manage performance and conduct issues in the workplace. But managers should not be expected to have high level legal or industrial expertise in these matters. In our work with community sector employers, we regularly observe performance management and disciplinary processes being derailed by vexatious claims of bullying.

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<sup>11</sup>Productivity Commission (2010) *Contribution of the Not-for-Profit Sector*, Research Report, Canberra

We accept that sometimes managers do conduct performance management and disciplinary processes in a bullying manner and workers require protection against that. But there needs to be a balance to allow reasonable management action to be taken, without becoming bogged down in weeks or months of disputation around bullying claims that ultimately prove to have no merit.

We have no specific recommendations at this early stage of the operation of the new bullying jurisdiction, but if there is to be any fine-tuning we would support moves to grant FWC greater discretion to quickly dismiss claims that have no reasonable prospect of success.

#### 4.4 GENERAL PROTECTIONS

***Do the general protections within the Fair Work Act 2009, and particularly the ‘adverse action’ provisions, afford adequate protections while also providing certainty and clarity to all parties?***

The operation of the General Protections provisions is an area where some incremental fine-tuning rather than major overhaul would be of benefit to employers.

The main concern that we observe in our work with non-profit community services employers is that when lodging a general protections claim with FWC, the applicant is not required to specify the basis of their claim that an adverse action has been taken for a prohibited reason. We see this as an important issue of natural justice for the respondent. The lodgement of a claim without any requirement to outline the basis of the claim creates an opportunity for speculative and vexatious claims by applicants.

The problem can be resolved simply by providing that the Forms used by FWC for general protection claims require the applicant to specify the alleged prohibited reason, and by providing FWC with the power to dismiss a claim on the papers if the reason is not identified in the claim.

Our experience has been that applicants routinely fail to provide any basis for their claims in their application. This means that often it is only at conciliation that the respondent employer finds out any detail about the basis of the allegation. This denies the employer any adequate opportunity to properly prepare their response prior to conciliation.