



The Institute of Public Accountants

## **Submission to the Productivity Commission: Workplace relations framework**

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**IPA** INSTITUTE OF PUBLIC  
ACCOUNTANTS

*Partnership beyond numbers*

## Introduction

The IPA is one of the three professional accounting bodies in Australia, representing over 35,000 accountants, business advisers, academics and students throughout Australia and in over 80 countries worldwide. The IPA recently merged with the Institute of Financial Accountants of the UK to form the largest accounting body representing the small business/SME sectors in the world.

The IPA takes an active role in the promotion of policies to assist the small business and SME sectors, reflecting the fact that two-thirds of our members work in these sectors or are trusted advisers to small business and SMEs. The IPA pursues fundamental reforms which will result in easing the disproportionate regulatory and compliance burden placed on small businesses.

This submission is based on the research and recommendations presented by the IPA Deakin University SME Research Centre; and informed by the members of the IPA.

If you have any queries with respect to our submission then please don't hesitate to contact Vicki Stylianou .

Yours faithfully

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## IPA Submission to Productivity Commission on Workplace Relations

Workplace relations are multi-faceted having a significant impact on many aspects of the small business, in particular influencing the innovation, skill formation, adaptability, and growth of many businesses in different industries (Productivity Commission, 2015, p. 2). Since the mid-1990s, Australia's industrial relations have been governed by different legislation, namely, the Workplace Relations Act 1996, the Workplace Relations Amendment (Work Choices) Act 2005, and the Fair Work Act 2009, with three separate bodies responsible for setting minimum wages and award wages (i.e., the Australian Industrial Relations Commission up to 2005, the Australian Fair Pay Commission from 2006-2009, and the Minimum Wage Panel of Fair Work Australia from 2010 onwards).

The replacement of the Workplace Relations Amendment (Work Choices) Act of 2005 with the Fair Work Act of 2009 has come under intense criticism, particularly by a number of commentators and major employer groups such as the Australian Chamber of Commerce and Industry (ACCI) and the Minerals Council of Australia. For example, it is believed that the Fair Work Act has dismantled many of the Howard and Keating-era reforms and has made industrial relations in Australia more centralised and regulated than it was several decades ago (Henderson, 2013). However, the impact of these legislations on the small business sector is little understood, especially its effects on small business performance. While it appears the Australian small business sector finds it beneficial to have a well-defined award system when setting wages and conditions for their employees, small business owners seem to be challenged by the complexity of the Australian industrial relations system. Notwithstanding, there is paucity of research based on reliable data examining the effects of Australia's industrial relations system on the small business sector, particularly on small business performance, making it difficult to draw reliable conclusions about its effects on the Australian small business sector (Farmakis-Gamboni, Rozenbes and Yuen, 2012).

The limited and generally dated literature (e.g., Buultjens, 2003; EWRERC, 2003) that exists on Australia's small business engagement with the industrial relations system suggests that small

businesses rely more heavily on awards when setting wage rates compared to larger businesses.

More recent literature (e.g., Evesson et al. 2011) finds that small business owners, particularly those businesses operating in the retail sector, have difficulty in understanding the awards system, with the decision of the Annual Wage Review 2009-10 adding to the confusion amongst business owners.

Under the Workplace Relations Act 1996 regime, however, Buultjens (2003) notes that small business owners were satisfied with the award system operating because it did not appear to inhibit flexibility within the workplace. The most important areas of flexibility identified by small business owners under the Workplace Relations Act regime were the ability to extend the range of employee tasks, adjustments to working hours, and the ability to hire and fire, whereas the least important areas of flexibility was the ability to alter wages to suit economic conditions. Buultjens (2003) research, which is based on a case study of registered clubs in NSW, suggests that small businesses attain flexibility by adjusting employees' working hours and by extending tasks that are least affected by the award system.

In a recent report on award-reliant small businesses commissioned by Fair Work Australia, Farmakis-Gammoni et al. (2012) report that approximately 13% of small businesses are award-reliant (i.e., businesses that have employees who are paid wage rates set according to the industrial award). After examining the ABS Business Longitudinal Database (BDL) for the financial year 2005-06, they find that award-reliant small businesses are less likely to report higher levels of productivity and profitability compared to small businesses that did not use awards or used a combination of awards and non-awards. In addition, these award-reliant small businesses are less-likely to survive, with most businesses that commenced using only awards eventually move to using non-awards or a combination of awards and non-awards. However, due to inherent data limitations in the BLD database, the authors were unable to determine whether award-reliant small businesses are adversely affected as a result of the actual award system or because of other micro- or macro-firm factors.

While Farmakis-Gamboni et al. (2012) observed no statistically significant differences between award-reliant employees working in small businesses compared to award-reliant employees working in larger businesses, they did observe that award-reliant employees in both smaller and larger businesses received lower hourly wages compared to non-award reliant employees. Although not directly examining award-reliant employees, McGuinness et al. (2006) found that smaller businesses (i.e., 1-19 employees) comprised the highest proportion of 'low wages' earners, suggesting that wages in smaller businesses were lower than those in larger businesses. In addition, Farmakis-Gamboni et al. (2012) note that award-reliant employees in small businesses are more likely to encounter higher rates of turnover and casualization compared to award-reliant employees in larger businesses.

As there is a lack of research examining the effects of Australia's industrial relations system on small business, the IPA believes there is some urgency in addressing this issue. It is important that there is more investigation into understanding how small businesses deal with the complexities of Australia's award system, particularly the effects of award wage increases on small business performance and on employment dynamics in this sector. Notwithstanding, there appears to be consensus in the literature about how confusing and complex the industrial relations laws are for many small businesses. It is often easy to breach the rules without intent.

It is also unsurprising to note from the Productivity Commission (2013) report repeated accounts from various organisations and businesses about their negative experiences with the Fair Work system. The IPA is particularly taken by the testimony of small marketing companies in the report about their legally expensive and frustrating experiences when being investigated by Fair Work officers. The report particularly highlighted the ongoing problems and expenses for many small businesses in trying to deal with issues surrounding the classification of people as either independent contractors or employees.

As part of the process for the Small Business White Paper which the IPA is developing with Deakin University, we undertook a regional roadshow around Australia in order to directly engage with small business owners and operators. We visited Frankston, Darwin, Bunbury (WA), Albury and Parramatta. Overall, we received input and feedback from approximately 500 small business people. One of the overwhelming themes was about the problems with the workplace relations framework. Most of the comments centred on the difficulties in employing people in terms of the myriad of applicable laws and regulations. Many small business people found it hugely difficult to comply even though they wanted to comply. Many found the system to be inflexible because of the sheer number of laws and regulations.

### **Recommendations:**

The Fair Work laws, along with their application and enforcement, are clearly areas of major confusion and expense for small businesses. It is an issue that we believe requires the urgent attention of the Government in Canberra, including legislative changes, to ensure:

- That there is a simplification of the Australian industrial relations system for small business owners.
- To ensure that Australian small businesses remain globally competitive, consider reviewing the award system to make it more flexible for small businesses, and to suit the economic conditions.
- More clarity be provided to the distinction between whether people engaged by small businesses are working as independent contractors or employees.
- Reduce or eliminate other areas of confusion for small businesses over their obligations under the Fair Work system.

In addition, all Fair Work officers should be encouraged to take a more educative and co-operative approach, particularly in relation to small business, rather than the aggressive attitudes and punitive behaviour reported in some submissions to the 2013 Productivity Commission inquiry.