

Productivity Commission Enquiry into Workplace Relations Framework

Submission by: Alan Bower

Small business owner for last 16 years

Experience with Fairwork staff

12 March 2015

Summary

The Fair Work Act and its operation is biased against employers and it needs tweaking.

Chapter 1, Division 2 “Objective of this Act” does not mention impartiality of the legislation so that Employer and Employee are treated equally and fairly under the legislation. Once the thrust of the legislation changes from anti employer to a fair basis of industrial relations and productivity, then a better and wealthier nation will evolve. As a small business employer for the past 16 years, I have had frustrations with costs and the battles to shed dishonest and lazy employees, as it appears that normal measures of justice do not apply to industrial legislation. It is a fact that good employees are hard to find and I, like other employers, value good employees and go to extra lengths to retain them.

The staffing of the Office of the Fair Work Ombudsman should contain an equal number of ex (or the contract of ex) Employers/managers to bring a balanced perspective and different experiences to staff who have only ever been employees, in both hearings and inspections.

Staff chasing “Piss Off” money can run speculatively actions without cost, and before anti employer decision makers (it is a truism that an organisation does not recruit people who are not attuned to that organisations stated objectives). I have been told by industrial relations lawyers that it is possible for costs to be awarded against actions with no prospect of success, but that in practice FWA do not award costs to employers.

A required change to administration is to synchronise record retention with tax records. It is costly and unnecessarily burdensome to have different government legislation on small businesses records.

Anyone with a passing knowledge of current business matters know how difficult it is for small business. The Labour government/unions changed the

definition of small business (Chapter 1, Part1-2, Division 4, Definitions) from full time equivalents to “heads”. Correction of this definition has the chance of increasing employment.

Specific Issues

Issues Paper #1

Para 1.4

The Fair Work Ombudsman should not have arbitration powers over small & medium enterprises(SME). It is the owners own money supporting the business and to be forced to take back a person who has destroyed the business relationship and most likely damaged the business, sends the wrong message to other employees to chase “pissoff” money and then relax on unemployment benefits. I think it would be against the individual employers human rights to be forced to pay a person who was not earning it.

Issues Paper #2

Para 2.3

Penalty Rates are excessive.

Everyone likes flexibility to attend family matters and shopping when shops are open. Australian society is no longer 9-5, Monday to Friday business. I allow staff to swap rosters as long as the business is adequately staffed. There are advantages for staff working when it suits them and the excessive penalty rates are a disadvantage for the business as it affects profitability in these very competitive times. All work places should have the same penalty rate principles, otherwise Unions would orchestrate rolling strikes in various work places to look good to employees and undo gains made.

Determining the definition of Small Business by head count mitigates against employing those who want part time work e.g. those with children at school, semi-retired who have knowledge & skills to pass on to other workers. Either revert back to full time equivalents or increase the head count of employed in the definition.

By employing part time staff, it would enable longer trading hours as employers would not be reducing hours to keep full time staff below the overtime threshold.

Issues paper #3

Para 3.2

IFI's were used by me to lower administrative costs. A large per hour rate was used and applied for all hours worked. An ex-employee complained to Fair Work that the rate was her standard pay and she was not paid penalty rates, despite her Individual Agreement. The inspector said "I strongly recommend you change your pay system to the components in the Award, and I will be back to ensure you have". By using the Award basis, I have lowered my payroll expense at a cost of longer administrative time. I believe it is also an example of Fair Work being against employers and for the union preferred award system.

Issues Paper #4

Para 4.2

The Fair Work Ombudsman and office is the major problem. They are anti employer. Legislation requiring a balanced approach and appropriate recruitment at set up would have encouraged a cultural of impartial review. The current system encourages a no cost speculative application for "pissoff money" and the published history of financial settlements encourages ex-employees to cause disruption and administrative/legal cost to the employer to attempt a payout. If the employee thought that a speculative application for money would not be successful, then they may be more productive and avoid the extreme measure of employment termination. Further, in a case, both myself and manager wrote a submission to FWC that an ex-employee was lying in their submission and the Fair Work Commission response inferred that he did not believe our submissions over the dishonest ex-employee.

Issues Paper#5

Para 5.2

As above, the staff of the Fair Work organisations are not objective. As an employer, I believe it to be cheaper overall to go along with whatever they say and bear the cost.

A related matter is the refusal of the Fair Work organisation not to give written rulings, similar to the Australian Taxation Office. My experience is around holiday pay. The Award specifies how much entitlement an employee has. If the employee works, in my case, a longer day than 7.6 hours as the Award

calculates, all written documentation is silent on whether to pay 7.6 hours for each and every day the employee is on holidays, or pay what the employee would normally work on each day. I have had different answers from different Fair Work staff plus refusal to provide an answer. My solution has been to pay staff what they normally work until their credit runs out. My staff still receive their entitlements, but they may not have 4 weeks off on full pay. Also, if I could employ more part-time staff under a new staffing number and still be classified as a small business, it would make rostering easier.