Productivity Commission — Workplace Relations Framework

Draft Report

Submission in Reply from the Government of South Australia

September 2015

SOUTH AUSTRALIA

Government of South Australia

Submission in Reply

The Government of South Australia welcomes the opportunity to provide a written submission in reply to the Productivity Commission's draft report (the Report) of its Inquiry into the National Workplace Relations Framework (the Inquiry).

South Australia notes the Productivity Commission's finding that the Workplace Relations Framework (the Framework) is not dysfunctional and should not be replaced, a position consistent with its original submission.

As a referring state, the Government of South Australia was closely involved in the development of the workplace relations principles, which provide the foundations of the Framework.

These fundamental workplace relations principles (the Principles) are:

- a strong, simple and enforceable safety net of minimum standards;
- genuine rights and responsibilities to ensure fairness, choice and representation at work, including the freedom to choose whether or not to join and be represented by a union or participate in collective activities;
- collective bargaining at the enterprise level with no provision for individual statutory agreements;
- fair and effective remedies available through an independent umpire;
- protection from unfair dismissal;
- an independent tribunal system; and
- an independent authority able to assist employers and employees within a national workplace relations system[1].

The Government of South Australia notes that there are key headline findings and recommendations that either support the existing Framework, or recommend strengthening or enhancing it.

Among these is support for the notion that a system of labour is not an 'ordinary input' in that the Framework must also give primacy to the wellbeing of employees in consideration of public norms about the fair treatment of people.

South Australia agrees and welcomes the finding that the minimum wage determinations should be maintained because they play an important role in maintaining the safety net (as do modern awards and the National Employment Standards) as well as setting a bench mark for other non-award related wage and employment outcomes.

The Government of South Australia particularly notes the finding that the current level of minimum wages are justified and are not 'highly prejudicial' to employment and that penalty rates, in modern awards, have a 'legitimate role' in compensating workers for working at unsociable times or for long hours.

[1] Section 30B(9), *FW Act 2009* (Cth)

The Government has advocated for a number of years for a comprehensive review of the apprenticeship and traineeship arrangements including its general support for a system of wage and classification progression based on the achievement of competency. Equally, the Productivity Commission's recommendation that junior rates of pay should be determined by alternative mechanisms such as competency and experience, are also generally supported.

The splitting of the Fair Work Commission (FWC) into two divisions, and the introduction of short term contracts for commission members are of some concern to the Government.

The Government of South Australia supports and welcomes the concept of state participation in the establishment of an independent expert panel to select FWC members.

Additionally, the development and distribution of information by the fair work institutions (to workers and employers) about conciliation outcomes, processes, bargaining and general protections and other matters is welcomed.

Any recommendation that proposes a reduction in the current safety net and minimum entitlements is not supported.

A significant portion of the South Australian working population is employed in the cafes, hospitality, entertainment, restaurants and retailing industries. Workers in these industries are among the lowest paid.

Invariably, the majority of the income earned by workers in the South Australian cafes, hospitality, entertainment, restaurants and retailing industries is expended predominantly within the South Australian economy.

The Government of South Australia contends that it should be for the industrial parties (and the independent FWC) to determine the appropriate level of wages, penalties and loadings through the modern award review process.

Penalty rates are currently being reviewed as part of the *Fair Work Act 2009* (Cth) (FW Act), four-yearly process. This process, supported by the South Australian Government, should be allowed to properly consider all of the evidence and make its decision based on its own enquiries and expert evidence.

In any event, the consideration of the appropriate levels of penalty (and loadings) should also remain a key part of the ongoing considerations of the enterprise bargaining agenda.

The Government of South Australia submits that any amendments that may be considered in the context of individual flexibility arrangements in awards and collective agreements

should not undermine the fundamental workplace relations Principles upon which the national workplace relations system is founded.

Increasing employee and employer awareness of Individual Flexibility Arrangements (IFA) through the distribution of information by the Fair Work Ombudsman (FWO) is welcomed, noting that the original intention of an IFA was to provide workers, returning from maternity leave (and the like), with a right to enter into an arrangement, with the employer, to vary their hours of work (and leave arrangements) to assist in the balancing of work and family life.

The Government of South Australia has concerns with the recommendation to replace the current better off overall test (BOOT), which compares an enterprise agreement (or an IFA) terms and conditions against the applicable modern award (particularly on rates of pay), with a no disadvantage test (NDT), where the NDT test will be between classes of workers (or like classes) and with the concept of an enterprise contract (EC) (as a new form of workplace agreement) that can adjust, override or reduce the terms of a modern award.

The Government of South Australia is of the view that those recommendations that restrict the ability to organise into employee associations (and employer associations), to take protected industrial action in support of bargaining or further limit the right of entry are contrary to the object of the FW Act and the workplace relations principles.

The Government of South Australia contends that the current unfair dismissal scheme (including the Small Business Dismissal Code) works well and should be maintained as a low cost jurisdiction that is accessible to workers.

The Government of South Australia is concerned that some of the recommendations could remove or restrict procedural fairness, as an element of consideration in determining whether a dismissal is unfair.

Additionally, procedural fairness is an important part of the industrial relations system (as well as other law). In any dismissal considerations, it is equally important that the processes, that leads to a dismissal including the worker and employer being informed and given the opportunity to respond, are fair and reasonable considerations in determining whether a dismissal is fair.

Finally, the Government of South Australia submits that workers should be entitled to public holiday penalties on all public holidays, irrespective of whether that holiday is prescribed by the state or Australian government.