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Senator Sheldon
Chair
Senate Education and Employment Legislation Committee

By email: eec.sen@aph.gov.au

Dear Chair,

Submission regarding Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023

COSBOA seeks an approach that will consider each matter with the following perspectives:

- to ensure we have a clear understanding of what problem is being solved.
- to achieve objectives in the most effective manner
- to ensure clear understanding of the impact of any proposed change or new measure upon Small Business including employees
- to seek reduction in red tape and compliance burden on a Small Business
- to seek the development of the workforce, agreed flexibility in employment arrangements and improve business productivity.

Perspective

In considering the proposed changes we seek an understanding by Government as to the typically productive, efficient and mutually beneficial relationship in small business between the employer and the workers. Small businesses thrive with effective workplaces. When the matters proposed in legislation are being considered we seek an impact on the processes that already exist or the additional processes that will be required.

We are also concerned that the impact of some of the matters being proposed will in fact create dysfunctional workplaces and create issues between employees and employers that did not exist in small business.

Schedule 1 – Protection for migrant workers

In principle we support an amendment that would clarify the application of Fair Work Act protections to temporary migrant workers, including those working in breach of migration laws.

The impact as explained in the Explanatory Memorandum (EM) paragraphs 5 & 6 are considered essential to the intended outcome

5. The provision would have a positive impact on migrant workers by providing greater certainty that they are protected by the FW Act.
6. The provision would not affect work rights (or consequences of non-compliance) under the *Migration Act 1958*.

Schedule 2 – Unpaid Parental leave

In principle we provide conditional support of the proposal to enhance flexibility in the unpaid parental leave entitlement.

We note the provisions about notice periods.

We remain concerned that for Small Business with a lesser number of employees, the flexibility being provided to employees may lead to an inability for the smaller business to operate. The ten week notice and the four week notice period is appropriate. The provisions acknowledging and permitting shorter periods by agreement are also acknowledged.

We are concerned that these provisions may result in employees seeking parental leave with minimum notice or for adhoc singular days, resulting in an inconsistent and inefficient work environment.

We seek a review of these provisions 6 months following their implementation to assess any practical impact that has not been assessed.

Schedule 3 – Superannuation

We are very concerned that this amendment creates yet further redtape and burden upon an employer to now report and substantiate superannuation payments to a second government regulator. Employers must already report superannuation obligations and payments through the ATO Single Touch Payroll, superstream and payment systems. Employers are already subject to scrutiny and investigation by the ATO. These new provisions create a duplicate obligation to Fair Work Ombudsman.

These provisions do nothing to improve the superannuation payment process imposed upon employers. The ATO Small Business Super Clearing House is not fit for purpose, the SG Legislation should be reviewed and modernised to meet current technology and current natural business systems.

We support the principle that all employees should receive into their superannuation accounts the Superannuation payments as required, however we do not see any benefit in these provisions.

We are also concerned that a consequence of this amendment will be that the Award system will now be utilised to create additional obligations on employers in relation to superannuation in addition to the existing superannuation guarantee legislation e.g. more frequent payments, additional amounts of superannuation. These are matters that should be properly considered in a review of the Superannuation Guarantee legislation.

Schedule 5 – Employee Authorised Deductions

We oppose this amendment.

We are unaware of any issue with the current system whereby an employee notifies an employer of their desired change to a deduction from their pay. Initially we perceive significant issues created where an employees pay is altered without the employees specific prior knowledge.

An employee's specific consent should be required to ensure the minimisation of disputes between employees and employers.

We are unable to determine any decrease in red tape, regulation, or burden on employers nor employees by this proposed change.

This proposal will create additional administrative burden upon employers to take on the role of notifying employees of a change in the amount of a deduction due to actions of which the employee may not be aware. In order to minimise employee confusion, the employer will now have to instigate communication of changes whereas the current system of the employee requesting a change to their salary arrangements maintains a simple and understood process.

Yours sincerely,

Matthew Addison
Chair
Council of Small Business Organisations Australia (COSBOA)

14 April 2023