

Food Processing Committee Questions on Notice

Lack of Flexibility in the Fair Work Act (Page 3 of the Public Hearing Transcript)

The character of the Fair Work Act 2009 is one of regulation and collectivism. It has a rights-based model for regulating industrial relations with a heavy emphasis on employee and trade union rights, a regulated safety net, and compulsory collective bargaining.

While freedom of association and enterprise bargaining are supported in principle by Business SA, the Act is structured on a proposition that assumes a level of collectivism or a desire for collectivism that does not exist in the modern Australian economy.

The majority of workplaces in Australia do not operate their industrial relationships on a collectivist approach.

The truth is that most businesses are generally small to medium in size, with employers preferring to deal with employment issues between the employer and employee, on an employment contract basis within the framework of a simple safety net of minimum wages and conditions. There is no or very little union involvement in the vast majority of Australian businesses.

Australian Workplace Agreements (AWAs) were part of Australia's workplace relations system from 1996 to 2006 without angst and provided a great deal of flexibility to employers and employees.

It was only in 2006/2007 when the 'no disadvantage test' was removed and AWAs became 'embroiled' in the campaign against the WorkChoices reforms that AWAs became 'a no go zone' for both major political parties.

However, both of the major political parties support the concept of an agreement reached between individual workers and their employer, which allows the relevant award or enterprise agreement provisions to be departed from, subject to the worker being better off overall. This current form of agreement under the Act is an Individual Flexibility Arrangement (IFA.)

Whilst IFAs appeared to promise so much in reality they have not proved to be a meaningful replacement for the flexibility provided by AWAs.

The Act prevents employers from offering IFAs as a condition of employment and employees can cancel them by the giving of four weeks' notice.

The anecdotal evidence of our members is that few employers are prepared to make an IFA with an employee and pay a wage increase in return for certain flexibilities, when the employee can give four weeks' notice and cancel the agreement.

IFAs in Modern Awards only allow the award to be varied in five areas not the whole Award.

As a result few employers see IFAs as a viable alternative to a genuine individual workplace agreement.

Also, there have been many instances where unions have refused to sign enterprise agreements unless the flexibility provision in the enterprise agreement which enables IFAs prevents any meaningful flexibility.

Accordingly, the Act should be amended to enable both individual workplace agreements (IWAs) and to create a more effective framework for IFAs.

Both forms of agreement should be subject to a type of 'no disadvantage' or 'better off overall' test (which can include non monetary benefits) and should be able to vary part or all of a modern award.

In addition, they should be able to be a condition of employment and be able to be made for a period of up to four years.

Proportion of Business SA Members in the Food Processing Industry (Page 3)

The proportion of Business SA members that operate in the food processing and related industries is 10.8 per cent.

Dispute Resolution (Page 7)

If there is a dispute between two members, Business SA has trained mediators who, if the members voluntarily agree, could conduct mediation in an endeavour to resolve the conflict.

Alternatively, in South Australia we now have a Small Business Commissioner and his office could be utilised if there was a dispute involving a small food processing member.

Proportion of Business SA Members in the Food Processing Industry that Export (Page 8)

Business SA does not keep data on the number or proportion of its members that export.

Data from the Australian Bureau of Statistics (Catalogue Number 8167) indicates that 7.4 per cent of all Australian businesses export goods and services. This proportion is 5.5 per cent for businesses with 0-4 employees, 8.5 per cent for businesses with 5-19 employees, 15.3 per cent for businesses with 20-199 employees and 32.8 per cent for businesses with 200 or more employees.

However, the above data inflate the importance of trade to business income. Just 1.9 per cent of business income is derived from overseas. This proportion is 1.6 per cent for businesses with 0-4 employees, 2.2 per cent for businesses with 5-19 employees, 2.3 per cent for businesses with 20-199 employees and 5.3 per cent for businesses with 200 or more employees.