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Fair Work Amendment Bill 2013 Submission



SOUTH AUSTRALIAN WINE INDUSTRY
ASSOCIATION INCORPORATED

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Introduction

The South Australian Wine Industry Association (SAWIA) is an industry association representing the interests of wine grape growers and wine producers throughout the state of South Australia.

SAWIA is a not for profit incorporated association, funded by voluntary member subscriptions, grants and fee for service activities, whose mission is to provide leadership and services which underpin the sustainability and competitiveness of members' wine business.

SAWIA membership represents approximately 96% of the grapes crushed in South Australia and about 36% of the land under viticulture. Each major wine region within South Australia is represented on the board governing our activities. Where possible, SAWIA works with the national Winemakers Federation of Australia and state counterparts in the wine industry. In relation to this submission we will be seeking their views and support for the position we have made below.

SAWIA has a strong track record as an industry leader and innovator in many areas. SAWIA pro-actively represents members and the greater wine industry with government and related agencies in all aspects of business in the wine sector.

SAWIA welcomes the opportunity to be able to put forward a submission regarding the Fair Work Amendment Bill 2013.

Background

The Australian Government has introduced a number of further proposed amendments to the *Fair Work Act 2009*. The *Fair Work Amendment Bill 2013* (the Bill) was introduced to Parliament on 21 March 2013 and has been referred to the Senate Education, Employment and Workplace Relations Legislation Committee for review with their report due on 14 May 2013 and has also been referred to the House Standing Committee on Education and Employment.

Summary

SAWIA notes that whilst there have been a number of proposed amendments in the Bill, this submission will focus on those proposed amendments that will more than likely have the most impact for employers in the wine industry. These amendments can be summarised as:

1. flexible working arrangements;
2. consultation in relation to a change in roster;
3. the anti-bullying measures; and
4. the proposal to amend the modern award objective.

The focus on these four key amendments does not lessen the impact of other proposed changes within the Bill, but focuses on those changes that will be likely to have the most effect on the operations of businesses within the wine industry. Below we have outlined why these four key issues, in the manner proposed by the Bill, are not agreed too.

Flexible Working Arrangements

The Bill proposes to expand the right to request flexible working arrangements to include employees:

- With responsibility for the care of a child who is of school age or younger

- Who are carers (within the meaning of the *Carer Recognition Act 2012*)
- With a disability
- Who are 55 years of age or older
- Who are experiencing violence from a member of the employee's family
- Who provide care / support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because the member is experiencing violence from the member's family

In our view the practical implications for employers to consider requests such as flexible working arrangements for employees experiencing domestic violence could potentially have unintended consequences. This proposed change could possibly pose some risk for the employer when seeking reasonable evidentiary requirements to confirm an employee is the subject of domestic violence. There may be issues of privacy and also does it become incumbent on an employer to report any domestic violence if they are aware of it occurring?

This proposed amendment could potentially cause more discrimination or adverse action claims if employers cannot genuinely accommodate the request.

Anecdotal evidence from our membership base shows that employers, where they can accommodate it, will provide employees with flexible working arrangements to cater for those who have family / caring commitments, including employees leading into retirement who wish to move to part time working arrangements.

The Bill also seeks to clarify when a refusal to agree to flexible working hours is reasonable or not. With respect, it is the employer that knows the cost impact, detrimental effect on customer service, flow on effect to other employees (having to work additional hours and or pick up the 'slack') and lost production that flexible working arrangements would have on the business, not the Fair Work Commission (the Commission).

Employers, under this proposed amendment, will have the additional burden of time taken to assess and try to accommodate flexible working arrangements along with the requirement to provide written evidence of refusal where such a request cannot be agreed to.

SAWIA opposes the proposed expansion of flexible working arrangements as proposed under the Bill and would suggest that in the alternative, there be a Guide on flexible working arrangements, which explains to both employers and employees the considerations, the benefits and how flexibility can be incorporated into workplace practices.

Consultation about changes to rosters or working hours

The Bill proposes that modern awards and enterprise agreements must include a consultation clause that requires employers to discuss changes to an employee's regular hours of work (including regular and systematic casuals) and ask for feedback in relation to the effect such roster changes would have on the employee's family and caring responsibilities.

The nature of manufacturing in the wine industry is dependent on a number of factors. During vintage, the number of employees increases significantly to cope with the additional work undertaken at this peak period. Additional shifts are required and 'just-in-time' manufacturing processes can, in some cases be implemented to cope with the influx of work. The wine industry cannot safely predict the exact time when grapes will be ready to be picked and need to be crushed, so there is a need in the industry to be able to change rosters and possibly introduce shifts within a short time frame.

To impose the additional burden of further consultation with employees regarding changes in their regular rostered hours, which in turn creates further administration to maintain the evidence of consultation, creates barriers for wine industry employers who are striving to maintain competitiveness and efficiency.

SAWIA would strongly oppose the proposal to introduce further consultation around changes to regular rostered hours and evidence from our membership base suggests that employers who are making any changes do not do this on a unilateral basis and will discuss such changes with those effected in any event. Part 2 – Consultation and Dispute Resolution of the *Wine Industry Award 2010* provides for consultation for major change that will have a significant effect on an employee (significant effect includes the alteration to the hours of work), which, in our member's view, provides sufficient protection for employees where changes to rosters need to take place.

Anti-bullying measure

This proposed amendment gives the Commission the power to make orders if they receive an application by an employee who reasonably believes they have been bullied at work.

Currently in South Australia SafeWork SA is the WHS regulator and is the body responsible for managing claims of bullying in the workplace under the *Work Health and Safety Act 2012 (South Australia)*. To have a state based organisation be responsible for the investigation of any claims of bullying is a sound practice. It is more convenient for the employer and employee to be in contact with a local body and any investigations can be conducted thoroughly at a local level with investigators having access to the workplace if required.

Unfortunately, there are cases where an employee who feels they have experienced bullying in the workplace can no longer attend their workplace until an investigation and a solution to the problem has been found. This means the employee could make an application to WorkCover SA who is the regulator for Workers Compensation and Rehabilitation in South Australia for compensation while they are absent from work, where a compensable claim is shown to exist.

Ultimately, this may mean that SafeWork SA and WorkCover SA will be conducting investigations simultaneously into any claims of workplace bullying. Further if the proposed amendment to the Bill is passed, and the employee makes a claim to the Commission, then the Commission will also be conducting investigations, which will add additional time that both the employer and employee will need to go through due to being involved with more investigations.

Whilst SAWIA supports measures to reduce (with the view to eradicating) bullying in the workplace, the proposal of appointing the Commission to deal with bullying matters, will add another layer of administrative and time burden to businesses that are already dealing with over regulated workplaces. A model where the Commission works with industry associations, employer groups and business to promote workplace training and education about what bullying is, what it isn't and the ramifications if bullying does occur in the workplace is the preferred model of SAWIA. This model would be proactive rather than reactive.

SAWIA strongly opposes the proposed amendment to give the Commission the power to make orders relating to bullying claims.

Modern Awards Objective

This amendment would require that the Commission, when ensuring that modern awards together with the NES provide a fair and relevant minimum safety net of terms and conditions, take into account the need to provide additional remuneration for employees working overtime; unsocial, irregular or unpredictable hours; working on weekends or public holidays; or working shifts.

As recently shown in the decision in the *Hospitality Industry (General) Award 2010*, *General Retail Award 2010* and others, where the Full Bench of the Commission rejected the application to have penalty rates reduced, it is apparent that these matters can be adequately dealt with by the Commission on a case by case basis rather than requiring Government interjection to have such penalty rates entrenched into legislation.

It is becoming more and more apparent as the 9-5 Monday to Friday working week evolves, that what was once thought of as unsocial and irregular hours, are now the preference for employees who require flexibility in working hours to fit around their study requirements, social life, family and caring responsibilities.

SAWIA believes that the Commission should continue to monitor these matters via the processes that exist currently by interested parties making application and opposes the proposed amendment.

Conclusion

SAWIA's members represent a diverse cross section of the wine industry, comprising small, small to medium enterprise and large employers. For the most part, the small to medium enterprise and small business make up the majority of our membership. The proposed amendments would see a significant impact on all wine industry businesses however, those businesses where there are no human resource departments and where there is no specialist industrial knowledge (small to medium enterprise and small business) would see a substantial impact. In its role to members SAWIA provides support and education to our members however, additional regulation imposed on employers is not the answer to better workplaces but rather facilitate equal proactive support for employers and employees through their respective organisations or industries directly.

Currently wine industry businesses are faced with increased workplace regulatory requirements, increased pressure from high labour costs and narrowed operating margins due to the high Australian dollar. It is imperative that the Australian Government lends support to business rather than introducing further restrictions that make it more difficult to operate in an already challenging environment.

The proposed Bill tips any balance of regulation strongly against employers and SAWIA therefore strongly opposes the Bill in its current format.