AUSTRALIAN CHAMBER OF COMMERCE AND INDUSTRY

Opinion Piece by ACCI Chief Executive Peter Hendy for the Australian Financial Review - "Sensible Negotiation Is The Key" - 25 August 2005

Sensible Negotiation Is The Key

By Peter Hendy - Chief Executive, Australian Chamber of Commerce and Industry

The most remarkable aspect of the family provisions test case decision this month by the Australian Industrial Relations Commission was that two years of hearings led to the most basic of outcomes that an employee can ask to extend her maternity leave from one to two years and an employer can say "no" if business reasons make that impractical.

Guaranteeing jobs for more than one year is not possible for many businesses and lots of women returning from maternity leave don't even use their full year of leave. Rejoining the paid workforce earlier than one year has been the trend, not the other way around.

Beyond that, the AIRC decision sends a deeper message. It tells us which way our industrial relations system should go towards workplace bargaining and away from economy-wide arbitration.

Here is the highest industrial relations authority. It is given its full powers of arbitration. It had 20 work and family claims before it about working hours, leave, rosters and employment categories.

Unions wanted it to create eight new employment rights across the nation. Employers wanted 12 new flexibilities. The commission conducted conciliation for six months and hearings for 12 months.

It received thousands of pages of evidence and submissions, and more than 30 witness statements from employers, small business owners, employees, academics, demographers and social policy researchers. Its five-member full bench reserved a decision for more than six months.

The result? For reasons set out in a 131-page decision, all eight of the union claims were rejected and all but two of the 12 employer claims were rejected. Everything rejected goes back to conciliation.

And the reason? "Our decision should be a cautious one and we should not attempt to deal with all the situations in which employees may seek additional flexibility", the AIRC said.

Industry is disappointed that this caution led the AIRC to retain an inflexible award system. But the logic of what it said cannot be denied. National arbitration on a one-size-fits-all basis

cannot deliver outcomes that are relevant to all needs and circumstances, whether of employers or employees.

Unions achieved more out of the conciliation agreement with employer bodies than from arbitration, which confirmed the right to request and to refuse. Conciliation gave a more secure right to use larger portions of accrued sick leave to look after sick family members.

The message to the workforce is clear. Employees need to look to direct dialogue with their managers, supervisors and employers to get a better mix between work and family.

There is no rocket science in this. It simply requires sensible people in workplaces making fair requests and respecting reasonable decisions.

Looking to governments, to politicians or national arbitration by industrial tribunals to structure work so, for example, an employee can take holidays that coincide with school vacations is a false hope. That is going to happen only by talking these things through in the workplace and fitting in with the needs of the business and other staff.

All that governments and tribunals can (and should) do is make employment rules flexible enough to allow direct dialogue at the workplace to be meaningful and lawful. With thousands of awards still setting tens of thousands of workplace rules, we need another set of industrial relations changes.

That is what enterprise bargaining is about. That is why the Keating government in 1993 and Howard government in 1996 were right to set up a bargaining system. Collective and individual agreements need to be more widely used.

That is a goal of the proposed industrial relations reforms being widely debated. The plan to simplify red tape in making agreements, and to allow more scope to change award regulation and restrictions, is the right direction.

National arbitration cannot deliver for employers or employees what commonsense negotiation can.