



THE AUSTRALIAN - OLD AWARDS DECKED OUT IN NEW RAGS

Opinion Piece by ACCI Chief Executive Peter Anderson as published in The Australian - 29 September 2009 - Award Modernisation

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*A modern safety net is needed to protect employees in the workplace, but an amalgam of old rules dressed up as new ones will just make workers less productive, contends **Peter Anderson**.*

The first experience most businesses will have with the Rudd government's industrial relations system from the beginning of next year will be new mandatory employment standards.

The new safety net is in fact two safety nets: a body of rules in legislation and another in industrial awards on an industry-by-industry basis.

Both are national, one made by the national parliament, one by the national IR regulator.

Sourcing our IR regulation from one set of national laws is sensible as long as the national rules work in the nation's interest.

Important to business will be whether the new safety net meets the government's commitments: that the new rules will be fair and flexible, be modern and (in the case of awards) not increase employer costs.

Responsible employers support a fair safety net.

Fortunately, the government has limited the new safety net to specified subject matters.

Although the Australian Industrial Relations Commission is doing a worthy job rewriting industrial awards, most of the modernisation is a worthy exercise in amalgamating existing awards to reduce numbers, but not making the content modern. In some cases the number of awards that apply at a single workplace will be reduced. The new awards have the potential to cut through that complexity.

However, content is more important than numbers. The flexibility of the new IR system will be sorely tested because industrial awards are one-size-fits-all rules. All businesses are assumed to have similar capacity and thus the same obligation to comply in every respect for every employee, and do so every day.

Deviations from award rules can be only by formal collective bargaining or using yet-to-be-tested individual flexibility clauses.

Even on this score there is union kick-back. Some manufacturing, construction and mining unions have already set up disputes because the employer wanted the type of flexibility rules in their collective agreement that the government promised.

On cost issues, many employers who have relied on government promises that the award modernisation process is not intended to increase their costs will be disappointed.

Earlier this month a full bench of the AIRC rang the bell on that one. In some states and in some industries labour costs such as penalty rates, allowances and wage classifications will go up, not because an employee is working differently or more productively but simply because it is impossible to create fewer awards and at the same time not increase employer costs or disadvantage any worker.

The government would have been better saying this from the start.

Only through the rearguard action by chambers of commerce and industry associations in securing up to five years' phasing in of these new costs will this blow be softened.

While the decision to phase in new costs during a lengthy period is welcome, this simply delays the inevitable cost increase.

For business, salt is rubbed on that wound. Whereas employers have to cop any higher costs that come their way under the new awards, the government's laws give unions an escape clause: a power to seek orders from the IR tribunal preventing any losses to an employee.

Last Friday the AIRC spread the reach of the award system further, with a catch-all award. This was a government idea just in case the amalgamated awards left some gaps.

This regulatory zeal hit a high-water mark when the commission said that it did not know exactly who the penalty rates, overtime, hours restrictions and leave loadings would apply to, but that it was likely that some people not covered by awards would be regulated.

The AIRC is one of Australia's most powerful regulators. It does not just enforce workplace law, it makes the law via these awards.

No regulator, let alone a powerful one, should make regulation without clearly knowing who is to be regulated, why and how. The government's own best practice regulation guides say so.

Decisions to expand regulation into the unknown worry industry intensely. Uncertainty is generated for no good reason.

Awards have never covered everyone, nor should they. Managers, professionals and higher income earners don't need the AIRC to package their salaries or tell them when to work.

Clearly, the government is not just restoring the safety net after the Work Choices experience. It is adding to its depth and extending its breadth.

Creating national industrial awards is difficult.

The new system must be given a chance to work but cannot be quarantined from criticism.

It creates a rod for its own back when it goes fishing in the dark with catch-all awards.

When our economy opened up to globalisation in the 1980s our award system was incapable of responding to the new competitive and labour market realities. Old award rules and their inefficient work practices ultimately led industry to adopt new approaches in the 90s, and prime ministers Paul Keating and John Howard to support workplace bargaining.

Today's award modernisation will not be worth all the trouble if awards end up looking like the old set of rules or again tie up industry with inefficient work practices.

Business is entitled to ask these questions without prompting simplistic claims that criticism is about a reversion to Work Choices. A modern safety net is needed, but an amalgam of old rules dressed up as new awards does not have history on its side.

Peter Anderson is chief executive, **Australian Chamber of Commerce and Industry**.