



CoSBA's Summary of Submissions the State Industrial Relations System 2017

In a letter from the Minister for Commerce & Industrial Relations in November 2017 advising of the conduct of a Ministerial Review of the State Industrial Relations System and inviting CoSBA to make a submission, stated:

"The Ministerial Review will be required to take into account the constituency of the State Industrial relations system, being mainly small business employers and State public sector employers employees. It is estimated that the State system potentially covers one in five employees (21.7 per cent) to more than one third of employees (36.2 per cent)"

Primary Consideration

In the 1997 report *More Time For Business*, the Federal Government's response to the 1996 "Bell Report" (*Time For Business*), the then Prime Minister, John Howard, in his Foreword stated, in part:

"Small Business is the engine room of the Australian economy, a vital source of enterprise, innovation and jobs.

Small Business is based on the self-reliance, initiative and vision of men and women with a commitment to hard work and the preparedness to take a risk to achieve their goals and ambitions. Small Business is integral to the decentralised network of family, workplaces and community which is the most effective guarantor of freedom and choice.

Too often in the past, government has been a burden for Small Business. Government has appeared unable or unwilling to understand the special needs of Small Business and unaware of the impact of decisions on them."

Accordingly, CoSBA would strongly submit, that in developing the revised industrial relations laws, the Government must demonstrate its willingness to understand the special needs of Small Business, not to burden Small Business with laws that unnecessarily bind Small Business in red tape, costs and legalistic processes, and be fully aware of the impact of their decisions on small businesses.

Therefore, in the review of the laws CoSBA calls upon the Government to:

- Give primary consideration to the special needs and aspirations of Small Business with 20 or less fulltime equivalent employees (FTE);
- Genuinely treat Small Business as having special needs and not expect them to have the same skills, knowledge, resources and capacity of big business;
- Decrease red tape and compliance costs on Small Business owners.

The submissions in **Section 1** below are CoSBA's submissions for changes, are made

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utilizing the template for the 'Summary of changes to the State industrial relations system' contained in the *Labour Relations Legislation Amendment and Repeal Bill 2012*' document. Additional submissions are set out in **Section 2** below.

Please note, our postal address is that shown above, at the bottom of the first page of this submission.

Section 1

1.1 - Structure and Powers of Commission	Submissions
The Western Australian Industrial Relations Commission (the Commission) will be retained and its structure streamlined. The Commission's broad conciliation and arbitration powers will be retained.	Agreed Agreed
The President's position will be abolished with a Supreme Court judge sitting on the Full Bench instead of the President.	Agreed
The constituent authorities, which deal exclusively with matters relating to government officers in the public sector, will be abolished and their functions and jurisdiction transferred to a single commissioner of the Commission.	Strongly Agree
The "Commission in Court Session" will be renamed the "Commission in Full Session".	Agreed
The Minister for Commerce will have the right to intervene in Commission proceedings on behalf of the State.	Agreed
The Commission will have the ability to order representation costs where a party brings or defends proceedings vexatiously or without reasonable cause.	Strongly Agree. Also refer to Section 2 below, item 2.4.
Cooperation with Fair Work Australia will be facilitated (e.g. enabling dual appointment of Commission and	Agreed
Various technical amendments will be made to the powers and procedures of the Commission.	Agreed

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1.2 - Awards	Submissions
The Commission will be required to undertake an award modernisation process for State private sector awards, with the process to be completed within 12 months of the legislation commencing.	Agreed, and the award modernisation process also be undertaken for State public sector awards. Additionally, award modernisation process to align the coverage and scope of the State awards with the coverage and scope the Federal awards.
The Commission will be required to consult with interested parties, provide exposure drafts of all proposed modern State awards, and provide interested parties with the opportunity to make submissions on the exposure drafts.	Agreed. CoSBA is an interested party.
The Commission will have the discretion to determine any necessary transitional arrangements arising from award modernisation.	Agreed
All awards (including public sector awards) will be reviewed every four years by the Commission to keep them up to date.	Agreed
The Commission will be required to review all existing enterprise awards and will not be able to make any new enterprise awards.	Agreed

1.3 - Agreements	Submissions
The collective bargaining framework will be changed to:	
- remove the ability for a party to unilaterally withdraw from a collective agreement that has passed its nominal expiry date. Instead, application will have to be made to the Commission to terminate the agreement.	Agreed
- increase the maximum nominal term of collective agreements from three years to four years.	Agreed
- Increase the maximum nominal term of enterprise orders from two years to three years.	Agreed

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1.4 - Unfair Dismissal	Submissions
Unfair dismissal laws broadly harmonised with the <i>Fair Work Act 2009</i> (FW Act) to place restrictions on employee access to unfair dismissal protections.	Agreed
Employees of small business employers (those who employ fewer than 15 employees) will be unable to make an unfair dismissal claim in their first 12 months of employment. All other employees will be excluded in their first 6 months of employment.	Agreed, provided that, unfair dismissal laws, exempt Small Business with 20 or less FTE employees .
Certain employees will be unable to make an unfair dismissal claim (e.g. fixed term contract employees who are terminated at the end of the contract term).	Agreed
Employees will not be able to claim unfair dismissal where they have genuinely been made redundant.	Agreed
The Commission will be prevented from awarding compensation for shock, distress or humiliation arising out of an unfair dismissal.	Agreed
The timeframe for bringing an unfair dismissal claim will be reduced from 28 days to 21 days.	Agreed

1.5 - General Orders/State Wage Case	Submissions
The process for setting the State and award minimum wages will be streamlined.	Agreed
The Commission will no longer be required to conduct a formal hearing in relation to the State wage order. The Commission can instead base its decision on written submissions made by any person.	Agreed
The Commission will be required, when making its State minimum wage order, to consider the:	
- national minimum wage order; and	Agreed
- capacity of employers "to whom the order extends" to bear the increase (this will have the effect of focussing on the capacity of small business).	Strongly agree, with primary consideration to be given to small business.
The State minimum wage will come into effect on 1 September each year (two months after the national minimum wage order comes into effect).	Agreed

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1.6 - Right of Entry	Submissions
Right of entry laws will be broadly harmonised with the FW Act by restricting the exercise of union rights and imposing penalties for the misuse of right of entry.	Strongly agree
Union officials will be required to pass a "fit and proper person" test to hold a right of entry permit.	Strongly agree. Non-employees holding union membership, including phony union officials, such as members of biker gangs be excluded as a "fit and proper person".
Unions will generally be required to give 24 hours' written notice before entering premises (except in relation to a suspected breach of occupational safety and health laws, in which case no prior notice will be required).	Strongly agree
Unions investigating a suspected breach of industrial laws, occupational safety and health laws or an industrial instrument will need to particularise the suspected breach in writing.	Strongly agree
Unions will only be able to hold discussions with employees during authorised breaks.	Strongly agree
Unions will generally be prevented from accessing non-members' employment records.	Strongly agree. Additionally, in cases when accessing employment records of members or non-members' the employees concerned must provide prior approval for the nominated union official to do so in writing.
Unions will be required to comply with reasonable requests of the occupier concerning certain matters.	Strongly agree
Civil penalties will apply where unions misuse right of entry.	Strongly agree

1.7 - Compliance and Enforcement	Submissions
Enforcement provisions will be streamlined and the powers of inspectors enhanced.	Agreed
Maximum penalties for breaches of awards, agreements and minimum conditions of employment increased from \$2,000 to \$5,000 (for an employer, organisation or association) and from \$500 to \$1,000 (in any other case).	Agreed
Industrial inspectors' powers will be enhanced to be	Agreed

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broadly consistent with the powers of inspectors under the FW Act. Changes include:	
- a specific power to ask for a person's name and address.	Agreed
- introducing infringement notices as an alternative to civil proceedings in certain circumstances.	Agreed
- clarifying the power of industrial inspectors to require the production of relevant documents.	Agreed
The Minister will have an ability to direct industrial inspectors to do certain things (e.g. to investigate and report on particular matters) rather than a "requirement" to direct.	Agreed
The appeal grounds to the Western Australian Industrial Appeal Court will be broadened, so that parties may appeal decisions that are erroneous in law or in excess of jurisdiction.	Agreed

1.8 - Registered Organisations	Submissions
Registered organisation provisions will be harmonised with the <i>Fair Work (Registered Organisations) Act 2009</i> in relation to the:	Agreed
- validation of certain acts done by organisations in good faith or after 4 years.	Agreed
- disqualification of certain persons from holding office e.g. those convicted of specified offences or contraventions.	Agreed
Amendments will be made to provisions relating to applications to register and alter organisational rules, and the keeping of ballot papers for 12 months.	Agreed

1.9 - Industrial Agents	Submissions
The regulation of industrial agents (who are able to provide legal-type services in the State industrial relations system) will be strengthened.	Agreed
Changes include:	
- enabling the regulations to prescribe minimum qualification and experience requirements for industrial agents.	Agreed

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- tightening professional indemnity insurance requirements (with the insurance policy of an industrial agent who employs other industrial agents to cover those employees).	Agreed
- preventing struck-off lawyers from being industrial agents.	Agreed
- improving processes for dealing with complaints and disciplinary action.	Agreed

1.10 - Freedom of Association	Submissions
Independent contractors will be protected from discrimination on the ground of membership or non-membership of a union.	Strongly agree

1.11 - Obsolete Acts	Submissions
The <i>Coal Industry Tribunal of Western Australia Act 1992</i> will be repealed.	Agreed
The <i>Conspiracy and Protection of Property Act of 1900</i> will be repealed with certain relevant sections preserved.	Agreed
The <i>Labour Relations Reform Act 2002</i> will be repealed.	Agreed

1.12 - State Employment Standards	Submissions
The minimum conditions of employment from the <i>Minimum Conditions of Employment Act 1993</i> and the Termination, Change and Redundancy General Order 2005 will be incorporated into the IR Act.	Agreed
The minimum conditions will be termed the "State employment standards". They will be modernised and harmonised where appropriate with the national employment standards in the FW Act in order to create a level playing field.	Agreed
The following changes will be made:	
- introduction of two days' paid compassionate leave (unpaid for casual employees) if an employee does not have 2 days' paid personal/carer's leave from which to take the	Agreed

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compassionate leave.	
- employees not entitled to personal/carer's leave unless they notify their employer of their absence.	Agreed, provided that the notification is made before or as soon as practicable on commencement of the leave.
- certain employees no longer excluded from minimum leave entitlements (e.g. commission-only employees and employees with a disability).	Agreed
- payment for any public holidays that fall during annual leave.	Agreed
- employers unable to make unreasonable deductions for the employer's benefit from an employee's pay.	Agreed
- signposting of the FW Act parental leave provisions, which already apply to employers and employees in the State industrial relations system.	Agreed
- inclusion of transmission of business agreement provisions to allow (but not compel) employers to agree to transfer an employee's accrued leave entitlements when a business is sold from one employer to another.	Agreed
- inclusion of redundancy pay entitlements that are broadly similar to existing entitlements.	Agreed. Provided that, redundancy pay should not apply to small business employers with less than 20 FTE employees .
- awards cannot extend redundancy pay to employees of small businesses or employees with less than 12 months' service.	Agreed
- inclusion of the Supported Wage System to enable the calculation of a wage for employees with disabilities.	Agreed
- prohibition of unpaid trial work for children (paid trial work will still be allowed). This will be an amendment to the <i>Children and Community Services Act 2004</i> .	Agreed. Provided that, this does not apply to work experience.

1.13 - Record Keeping and Pay Slips	Submissions
Employers will be required to provide employees with pay slips (consistent with the FW Act).	Agreed

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There will be additional record keeping requirements for employers (due to the introduction of new minimum conditions).	Agreed
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Section 2

Additional submissions

- 2.1 Provide for individual workplace agreements, by amending Part VID – Employer-employee agreements provisions of the *Industrial Relations Act 1979*, so as to:
 - streamline and simplify the process for the making and registration of agreements;
 - remove of the requirement for mandatory involvement of unions;
 - make provision for an employee to be represented by a person of his/her choosing should he/she wish to be represented and;
 - agreements be underpinned with a 'no disadvantage' test.
- 2.2 Provide protection against union control of workplaces.
- 2.3 All claims brought by an employee, howsoever represented, be subject to mandatory cost free mediation without exception. In keeping with the process set out in the Small Business and Retail Shop Legislation Amendment Bill 2011 and the Victorian model.
- 2.4 Frivolous and vexatious claims not be the subject of a separate application, and be dealt with under the application that is the subject of the frivolous and/ or vexatious claim, and they be heard contemporaneously with the application concerned. And, provide broader capacity for the tribunal to order costs. The need to lodge a subsequent application is unnecessary red tape and a disincentive for small businesses to pursue the frivolous and/ or vexatious claims.
- 2.5 The Commission to be required to give full weight and meaning to it acting according to equity, good conscience, and the substantial merits of the case without regard to technicalities or legal forms and not being bound by any rules of evidence, but may inform itself on any matter in such a way as it thinks just.
- 2.6 CoSBA urges the Government to give consideration to adopting substantially more of the recommendations contained in the *Amendola Report*.