

22 November 2017

Mr Mark Ritter SC
Secretariat: L4, Gordon Stephenson House
140 William Street
PERTH WA 6000

Dear Sir,

Ministerial Review of State Industrial Relations System

Master Builders Western Australia welcomes the opportunity to provide this written submission to the above Review.

Should there be any issues in the submission which require further comment or clarification on, Master Builders is more than happy to do so.

Yours sincerely,
Master Builders Association of WA



Kim Richardson
Construction Director



**Submission to the Ministerial Review of
The State Industrial Relations System**

1. Introduction

- 1.1. This submission is made by Master Builders Association Western Australia (Master Builders).
- 1.2. Master Builders is one of the oldest registered employer associations in the Registry of the Western Australian Industrial Relations Commission (WAIRC) with its registration having been continuous since 1904.
- 1.3. Master Builders was formed in 1898 to represent the best interests of its respective builder members and those who participate in the building and construction industry in Western Australia. That core element remains at the heart of Master Builders registered rules today and in the role Master Builders plays in the Western Australian building industry in a current and future sense.
- 1.4. Master Builders has over 1,700 members comprising:-
 - National commercial builders
 - Large state based commercial builders
 - Specialist commercial sub-contractors
 - Residential builders
 - Residential sub-contractors
 - Kindred employer groups
 - Government agencies
 - Suppliers
- 1.5. Master Builders membership carries out building and construction work throughout Western Australia in commercial construction, residential construction, resource construction and civil construction. Its members are located throughout Western Australia.
- 1.6. Master Builders maintains a continuous presence throughout the state via its regional office network in Bunbury, Albany, Geraldton, Kalgoorlie and Esperance to provide services to its regional members and to represent their interests.
- 1.7. Master Builders is also a member of the Master Builders Australia federation which comprises autonomous Master Builder Associations in each State and Territory which comprise Master Builders Australia. Collectively, the Master Builders movement represent over 32,000 businesses nationwide.

2. Economic Importance of the Building and Construction Industry

- 2.1. As at August 2017 there were 146,170 persons employed in the Western Australian building and construction industry down from an all time high of 152,000 in 2015. The industry's employment levels remain at higher than expected numbers given the contraction of construction work in the resources, commercial construction, residential and government infrastructure sectors in recent years. The building and construction industry in Western Australia employs about 10% of the state's workforce and contributes about 9% to the Gross State Product.
- 2.2. The building and construction industry is a major economic driver of the Western Australian economy. To place a dollar value on this economic importance Master Builders refers to economic forecasting by Master Builders Australia on the Western Australian construction sector which values construction activity in the state.

	Residential construction activity	Non-residential construction activity	Engineering construction activity
2017-18	\$6.22b	\$4.59b	\$15.2b
2018-19	\$6.09b	\$4.64b	\$14.2b

3. Background

- 3.1. The Minister for Mines and Petroleum; Commerce and Industrial Relations; Electoral Affairs; Asian Engagement, The Hon Bill Johnston MLA, on 22 September 2017, issued a Media Statement announcing the commencement of a review into the State industrial relations system. Terms of Reference of the review were also issued by the Minister at that time.
- 3.2. Master Builders welcomes the opportunity in providing a submission to the review and meeting with Mark Ritter SC and Stephen Price MLA, who are conducting the review, on 13 November 2017, as a sounding measure on what issues are important to stakeholders.
- 3.3. Master Builders has been a consistently strong advocate for retaining the Western Australian industrial relations system and remained so in the previous decade when the federal Workchoices legislation was introduced which cast a net over constitutional trading corporations in 2006. State Governments under the Fair Work Act 2009 had the opportunity to refer their industrial relations powers to the Federal Government, as far as private sector non-trading corporations were concerned, with the former Western Australian Government choosing not to take up that option. Master Builders supported that outcome.

- 3.4. Master Builders acknowledges its position on this matter places it at odds with some employer bodies in Western Australia, however, the position was arrived at after assessing the impact on small and medium sized employers in the building industry which would be adversely affected by switching from the State industrial relations system to the Federal industrial relations system. That opposition was based on increased labour costs for these small employers as a result of them being captured by the federal Building and Construction General On-site Award 2010. This Award has a unique definition of redundancy which might be described as a corrupted definition of redundancy which goes much wider than what the Termination, Change and Redundancy General Order 2005, or even the Federal National Employment Standard on Redundancy defines. Further, small and medium sized employers carrying out building maintenance work who are currently covered by the Building Trades Award 1968 would have found themselves covered by the Federal On-site Construction Award imposing higher labour costs they were not exposed to under the State Award. Master Builders opposition was based on real issues rather than any philosophical disagreement to the Federal Industrial relations system applying. As the opportunity for State Governments to transfer their state industrial relations powers to the Federal Government for private sector employers which are not constitutional trading corporations has now passed, the issue is a moot point, but one Master Builders wishes to reaffirm on the record.

4 Review Terms of Reference

- 4.1 At the outset Master Builders notes some of the Terms of Reference deal specifically with the efficient structure of public sector agencies and governing awards. Master Builders does not provide any comment on those issues but does provide comment on what issues are considered important for the building and construction industry and those employers which remain covered by the State industrial relations laws.
- 4.2 **4. Review the definition of employee in the Industrial Relations Act 1979 and the Minimum Conditions of Employment Act 1993 with the objective of ensuring comprehensive coverage for all employees.**
- 4.2.1 Master Builders raises its concerns about the potential reach of this Term of Reference to capture genuine small sub-contractors in the building and construction industry structured as sole traders, partnerships and some family trusts. Such sub-contractors will in the main work in the residential sector and any move to rope these sub-contractors into the State Industrial Relations system as employees will have a significant impact on increasing labour costs in new house construction. That would come about by imposing minimum employment conditions on those sub-contractors under the Minimum Conditions of Employment Act 1993 and/or State Awards. The question then arises, who will be the identified employer of those sub-contractor/employees with Master Builders saying the only conclusion to be drawn on that issue is the residential builder who engages such sub-contractors to perform building work. That outcome will

inevitably restrict the current flexibility of the sub-contract system and increase new housing construction costs affecting first home buyers and their ability to access, and afford to pay a mortgage. At a time of depressed new housing activity in the Western Australian economy this is not an outcome any Western Australian Government would want to be held responsible for. Additional comment is included on this aspect later in this submission.

- 4.2.2 Master Builders contends the definition of employee currently set out in the Industrial Relations Act 1979 (IRAct) is adequate.
- 4.2.3 Master Builders is aware of developments in other States which deal with the licensing of labour hire providers. Recent media reports indicate the Minister is looking at a similar path and Master Builders foreshadows some stakeholders may call for the licensing of labour providers under this Review. Master Builders raises the same point as in sub-clause 4.2.1. That is, a real risk arises in any wide definition of labour provider which looks to apply to a person who provides labour only, or predominant labour only services/personnel.
- 4.2.4 Those conducting the Review are aware there are two types of traditional labour hire provider. One being the model the labour hire provider of skilled employees contracts with a host employer to supply that host employer skilled labour in certain employment categories for nominated time frames. The second model is the Odco version whereby there is no employer/employee relationship between the labour hire provider and worker, as case law has determined such an arrangement is a sub-contractual arrangement.
- 4.2.5 Master Builders does not quibble in principle with any move to introduce a licensing system for Western Australian labour hire providers, if such a move is contemplated. In the event consideration is given to introducing a labour hire licensing regime Master Builders at the very least would raise discussion about what might constitute the definition of a labour hire provider.
- 4.2.6 A common feature of small sub-contractors in the Western Australian residential sector is many provide predominantly labour only services. For example, a bricklaying team will provide mostly labour only on site with a builder supplying bricks, sand and cement. Should a definition of labour hire provider be vague it might very well cover the bricklaying team example notwithstanding the bricklaying team not being a traditional labour hire provider and never intended to be so.
- 4.2.7 To highlight the possible impact of any decision which impacts on the State residential construction sector, Master Builders refers to the Australian Bureau of Statistics (ABS) catalogue 6333.0, as at August 2016, on the Characteristics of Employment, Australia. The ABS data sets out over 1 million persons were independent contractors in the national workforce in August 2016. Of those 30% or 300,000 were engaged in the building and construction industry. Master Builders contends a reasonable assumption to make about the Western Australian cohort of these sub-contractors is to apply the usual break up of 10%, or there being 30,000 independent contractors in the local construction industry, many of

whom work in the housing sector. Should these or a substantial portion of this group of independent contractors be deemed employees under changes to the State IRAct the flow-on effect into the housing sector will be massive.

- 4.2.8 Official statistics indicate a level of volatility in new housing/unit construction starts in Western Australia over the past 8 years or so with new starts in 2009/10 of 25,400 lifting to an all time high of 31,600 starts in 2014/15 dropping to 25,500 in 2015/16, dropping again to an estimated 20,000 in 2016/17 and predicted to remain at about that figure for the next 2 years or so. The predicted figures represent building volumes more attuned to the early 2000s and reflect the current diminished level of work in the residential sector.
- 4.2.9 Given the residential sector provides a barometer of the health of the Western Australian economy, Master Builders says the figures of new residential starts in paragraph 4.2.8 above show in stark terms the tough economic circumstances the residential sector is experiencing. That is why, Master Builders urges great caution by those conducting the Review and the McGowan Government when considering any change to the definition of employee under the State IR Act. This is to avoid causing significant damage to the residential construction sector by introducing measures which will result in increases in labour costs and decreasing build efficiency.
- 4.2.10 Some might argue Master Builders is alarmist in its submission on the impact of roping sub-contractors into the definition of employee under the state IR Act but Master Builders looks to recent history to not just reinforce its position but as an example of what unintended consequences can result in when not properly assessed by Government. The previous State Government introduced the Building Act 2011 which overhauled 50 years of State legislation governing building requirements in Western Australia. The change was massive and involved significant stakeholder consultation with industry welcoming the stated intent of what benefits would flow from the new legislative framework. The outcome actually experienced was anything but what was promised. The impact of the unintended consequences of the new Building Act 2011 resulted in new residential and commercial construction projects being stalled in a sea of red tape with construction activity dropping sharply. The situation reached such a low ebb amendments were rushed through Parliament in October 2012 to rectify the roadblocks to new construction activity given new construction activity was slowing to a trickle. Master Builders points to that experience to provide a note of caution of what can happen to the Western Australian economy in an immediate manner if there is legislative overreach.
- 4.2.11 Master Builders notes the Minimum Conditions of Employment Act 1993 has a definition of employee which picks up what is within the meaning of the IRAct but adds the clarification *"but does not include a person who belongs to a class of persons prescribed by the regulations as persons not to be treated as employees for the purposes of this Act."* Master Builders recommends this simple, concise addition be included in the definition of employee in the IRAct to add clarity about the definition of employee not extending to include sub-contractors.

4.3 5. Review the minimum conditions of employment in the Minimum Conditions of Employment Act 1993, the Long Service Leave Act 1958, and Termination, Change and Redundancy General Order of the Western Australian Industrial Relations Commission to consider whether:

(a) The minimum conditions should be updated; and

(b) There should be a process for statutory minimum conditions to be periodically updated by the Western Australian Industrial Relations Commission, without the need for legislative change.

4.3.1 Master Builders does not consider there is a need to update the MCEAct, LSLAct or TCR General Order. Each appear to apply with little confusion and are in their own respective right easily understood and interpreted. Master Builders foretells some stakeholders calling for the MCEAct, at least, to be consistent with the federal National Employment Standards of the Fair Work Act 2009. Whilst this may have some attraction for consistency sake, Master Builders contends a slavish following of the NES is not what is in the best interest of small employers in the Western Australian industrial relations system. In the main, such employers are sole traders and partnerships. Generally, this means they are not sophisticated and will be a mum and dad run business. They cannot afford to have in-house IR/HR experts and will look to websites for information or hopefully join an employer industry body for basic advice and assistance but that is not certain, and in Master Builders experience, often not the case. That is, the Review must take into account the target audience in the private sector who will be impacted by any change. This is a position Master Builders contends is often overlooked in matters of this type.

4.3.2 Master Builders position on the aforementioned issue is shaped by its own direct experience in providing advice to members about NES and Modern Award obligations. As those conducting the Review will be aware, the Fair Work Commission in 2014 commissioned a report by Sweeney Research on the understanding of modern awards by small business. A copy of the Report's Executive Summary is attached. The findings for small business tell a clear story of how small business struggles with the legalese jargon of Modern Awards.

4.3.3 Master Builders understands the Fair Work Ombudsman's Office also conducted a similar survey of small businesses in 2014 with similar findings. The reality is small employers find Modern Awards unintelligible.

4.3.4 Master Builders simple submission on this point is the hard won lessons of the Modern Award introduction exercise must not be lost or forgotten. Only small and medium sized employers remain in the Western Australian industrial relations system and their capacity to access and understand what their minimum legal employment obligations are must be of paramount consideration in this Review. If

not, the Review will fail those employers and the outcome will follow the failed footsteps of the Modern Award debacle.

4.3.5 Master Builders sees no need to vary the Long Service Leave Act 1958. Master Builders also reminds those conducting the Review any material change to the 1958 Act will have an immediate flow-on to the Construction Industry Portable Paid Long Service Leave Act 1985. The application of the LSL Act 1958 is well understood and Master Builders is not aware of any groundswell for change to how it is applied. The original reasons for providing long service leave to employees who immigrated to Australia from the UK no longer exist hence the impact on employers should not be compounded.

4.3.6 Likewise, Master Builders sees no need nor merit to vary the Termination, Change and Redundancy General Order 2005. Further, as the core aspects of the General Order reflect the NES Redundancy provisions there is little reason for change, especially if one defaults to the consistency argument raised by some between the federal NES and State industrial relations system.

4.4 **6. Devise a process for the updating of State Awards for private sector employers and employees, with the objectives of:**

- (a) Ensuring the scope of awards provide comprehensive coverage to employees;**
- (b) Ensuring awards reflect contemporary workplaces and industry, without reducing existing employee entitlements;**
- (c) Ensuring awards are written in plain English and are user friendly for both employers and employees; and**
- (d) Ensuring that any award updating process is driven by the Western Australia Industrial Relations Commission, with appropriate input from the award parties and other relevant stakeholders.**

4.4.1 Master Builders previous comments in section 4.3 of this submission hold equal weight under this Term of Reference.

4.4.2 Master Builders is not opposed to the WAIRC conducting updates of State Awards to at least maintain currency with State Wage Decisions or changes in the nature of work and how it is carried out in the context of award coverage and scope.

4.4.3 Sub term (b) in setting out there ought be no reduction in existing employee entitlements seems to Master Builders to be particularly narrow in that there is no equal emphasis placed on there being NO increase in labour costs for small to medium size employers which remain in the State industrial relations system. This omission needs to be corrected, especially given the current economic circumstances which prevail in Western Australia.

4.4.3.1 Master Builders refers to the 2017 State Wage Case General Order and observations by the Commission in that Order about the state of the Western Australian economy. The Commission in paragraph 221 set out *"It is clear*

from economic data that Western Australia's economy is in the poorest state it has been for many years compared to the national circumstances." Further, at paragraph 222 the Commission observed *"Business investment is forecast to fall by 32.5% in 2016-17 and a further 17% in 2017-18, before returning to positive growth in 2018-19. This means Western Australia will see a 50% reduction in business investment this year and next"*. Master Builders position is any major reduction in business investment impacts directly on small to medium size employers including those who remain in the State industrial relations system. That is, these employers are in no economic position to sustain increases in labour costs and continue to employ people or run a business. The omission of that important aspect in the Terms of Reference must be addressed.

- 4.4.3.2 Master Builders does not raise the issue of not imposing costs on employers as a hypothetical case, rather, one of a practical outcome. Master Builders refers to paragraph 3.4 of this submission and the basis of its objections to agreeing to transfer private sector employers under the State industrial relations system to the Federal industrial relations system from 2006. That objection was based on the increase in labour costs for small employers in the building which would follow such a change. What Master Builders puts is any move to align the State Awards with Federal, so called, Modern Awards will have a cost associated with that move. The costs identified by changing redundancy obligations and fares and travel allowance payments are just two examples in only the State building trades awards. Other state awards would likely have similar outcomes. If the outcome of the Review is to align the State and Federal Award Master Builders would urge a suitable transition period be imposed on any cost impact over at least 5 years to soften the economic blow to small employers. This is necessary as the Western Australian economy begins to splutter its way back to strong health over the next 4-5 years.
- 4.4.4 A concern Master Builders has with this Term of Reference is it implies adopting a path similar to the failed 4 year review of Modern Awards by the Fair Work Commission under the Fair Work Act 2009. As those conducting the Review understand, all major federal stakeholders in that process have made a joint approach to the Federal Government to scrap what has proven to be an enormous let down. What was a good idea in 2009 has fallen well short of delivering its intended outcomes with all major players devoting significant time, resources and incurring considerable cost for, at best, incremental improvements which could have easily been achieved by the FWC looking at individual awards following input by the award stakeholders. The failed Award Modernisation process is not a model the Review ought recommend.
- 4.4.5 Having put the submission above Master Builders contends the WAIRC still needs to play a role in updating the State awards. One way of facilitating this would be to establish industry consultative panels with representation via Ministerial appointment to provide input on what change might be appropriate for the 21st century workplace.

4.5 Review statutory compliance and enforcement mechanisms with the objectives of:

- (a) Ensuring that employees are paid their correct entitlements;**
- (b) Providing effective deterrents to non-compliance with all State industrial laws and instruments; and**
- (c) Updating industrial inspectors' powers and tools of enforcement to ensure they are able to perform their statutory functions**

4.5.1 Master Builders echoes the same issues it canvases in section 4.2 of this submission being that the definition of employee should not be expanded to unintentionally capture independent sub-contractors and expose principal contractors engaging legitimate sub-contractors to claims of non-payment of state award and/or minimum conditions of employment entitlements.

4.5.2 A further concern for Master Builders surrounds right of entry for authorised union representatives under s49I of the State IRAct. As the reviewers will be aware, s49I(1) provides a properly authorised union representative right to enter site to investigate suspected breaches of the Long Service Leave Act 1958, MCE Act, Occupational Safety Act 1984 and Mines Safety Inspection Act 1994. The issue of concern to Master Builders being right of entry to investigate alleged unsafe work practices under the OSH Act by construction union officials.

4.5.3 Master Builders says the current wording of s49I(1) is ambiguous in the sense entry to site to make such investigations by an authorised union official is inadequate in that it does not require a union official to first indicate to the site occupier what the alleged safety contraventions are. Presumably, a union official seeking entry to site to conduct investigations into alleged breaches of the OSH Act will have a genuine belief of what the alleged breaches are prior to wanting to enter a worksite. It is therefore incongruous s49I(1) allows a union official to make a vague assertion to the site occupier about wanting to investigate an alleged breach of the OSH Act but then not identify to the site occupier what the alleged OSH breach is. It is much like a member of the WA Police Service exercising a search warrant without detail of what it is they are looking for with the courts never allowing such an abuse of process. Master Builders says the same standard ought apply on this matter.

4.5.4 Master Builders says s49I(1) needs to be amended to provide a clear set of obligations on authorised representatives on what information they must provide when seeking to exercise entry to site. This also provides a clear guideline to site occupiers of what the union official is seeking to look at on safety.

4.5.5 Master Builders contends this is an important step forward on the safety front as all stakeholders in the building industry have over the past two decades or more recognised the importance of safety in the building industry and committed significant resources to improving safety levels in the industry. Master Builders is

pleased to say there has been a major improvement in industry safety standards over that same time frame though more needs to be done.

- 4.5.6 Clarity on this issue is needed as Master Builders is aware of many instances over the years involving CFMEU(WA) officials seeking to enter site to investigate alleged safety issues but abusing safety to pursue industrial relations purposes. In doing so, the union officials make vague assertions about some alleged safety breach on site and then want to walk round site conducting a fishing expedition to identify issues. These can, and have, included safety breaches such as non-correct tagging on electrical equipment which would be characterised as a low risk safety issue on site.
- 4.5.7 Master Builders does not oppose unions having a right of entry to investigate genuine safety issues on site, however, the right needs to be properly set out in the IR Act and provide both sides with an equitable and unambiguous position. For example, s49M of the IR Act covers site occupiers obstructing authorised union officials when exercising right of entry under s49. There is no similar penalty provision under s49 for a union official.
- 4.5.8 Master Builders also raises for clarity sake where in the event the Fair Work Commission may suspend/revoke or impose conditions on the right of entry permits issued to federal a union official that the State IRAct should contain an automatic adoption of whatever outcome the FWC has determined to a federal union official's entry permit. Master Builders contends there can be no justifiable opposition to allow otherwise. A breach of acceptable standards of behaviour by a federal union official must have an immediate flow-on impact on their State right of entry permit. Master Builders says there can be no discernible difference between either the State or Federal entry permits.
- 4.5.9 Master Builders echoes its concerns raised with the Reviewers on 13 November 2017, regarding lifting the penalty provisions of the State IRAct to reflect the FWAct 2009. That concern goes to the private sector employers which remain under the State IR legislation and has been touched upon already in this submission.
- 4.5.9.1 Such employers are generally unsophisticated and small business operations. Master Builders experience has been these employers when confronted with allegations of having breached some state or federal law in the course of conducting their business will have little understanding of what to do or to whom they might seek advice and/or assistance from. Often, this results in the small business offering a plea of guilty as the easiest option for them, which may not be the best outcome or even the right outcome for them, and do so in the absence of any legal representation. Why? Small employers of this nature cannot afford legal representation and decide a plea of guilty is the cheapest option for them. The effect of such a decision by a small employer can be assessed in the written submission to the Legislative

Council's Public Administration Committee Inquiry into WorkSafe from Mobi Crane WA Pty Ltd submitted on 9 October 2017.

4.5.9.2 Master Builders submission on this point ought not be misconstrued as suggesting employers who breach the State IR laws ought not face prosecution. What Master Builders advances is any prosecution powers should provide the necessary flexibility in sentencing to provide equity. The make up of many small employers in the state industrial relations system will see many not knowing what they don't know out of ignorance. It is accepted ignorance is no defence under the law but an unintentional breach should be treated less harshly than a breach by intent. That is why Master Builders has raised the issue in paragraph 4.5.9.1. At times, a misguided approach taken by small employers when faced with prosecution action, with serious consequences sometimes flowing from this flawed decision can, and will, severely impact on the well-being of the employer. Whilst justice is to be applied it ought be done equitably against the circumstances of each case. An option which might offer some relief to small employers is the notion of legally enforceable written undertakings prior to any prosecution being initiated. In essence, as those conducting the review will appreciate, this option presents a form of plea bargain negating prosecution action and therefore mitigating against legal costs by the parties. A breach of such an undertaking has legal force which can be actioned before the courts. Such undertakings are not novel and already exist under the State and Federal safety laws in various forms. The federal Work Health and Safety legislative model in Master Builders submission is the preferred model in that it is an arrangement actionable before prosecution is secured, unlike the OSH Act 1984 version which can trigger after a prosecution. That is, the OSH Act model offers little meaningful relief on the legal process or associated costs to the parties.

5. Conclusion

Master Builders submission can be distilled down to the very simple message of reforming the State IR system to be as user friendly as possible for those small businesses which remain covered by the system as they are the employers that are required to read and understand what their employment obligations are.

Overhauling the way the WARIC conducts itself and its operations would be timely. Industry associations like Master Builders and its members rarely have engagement with the WAIRC these days. This prompts the question, what does the WAIRC do and what should be its purpose. Amending the legislation to facilitate regular communication between industry and the WAIRC would be a good start to rejuvenate the WAIRC's relevance and add value to the taxpayers' sponsorship of its operation.

In this day and age of information technology, the WAIRC is recommended to provide more information to employers and employees online and in a user friendly format. The provision of apps containing relevant information should also be considered.

Regular communications between the WAIRC and the Small Business Development Commission (SBDC) is also recommended to assist/educate small businesses that are being formed.

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A Qualitative Research Report on:

**CITIZEN CO-DESIGN WITH SMALL
BUSINESS OWNERS**

Ref No. 24210 • 13th August 2014 • V1

Sweeney Contacts:

Jennifer Hodges and Matthew Bond

Prepared for the Fair Work Commission

Executive Summary

This qualitative study was commissioned by the Fair Work Commission in the context of the 4 yearly review of modern awards to elicit practical insights from small businesses (1–19 employees) that are end-users of modern awards.¹ The current consultation on modern awards may not necessarily capture the views of end-users from the small business sector who are not active participants (or who pay for their interests to be represented) in the workplace relations system. Accordingly, a citizen co-design process was proposed to engage some of these end-users in a qualitative study.

The overarching objective of the study was to understand the attitudes and behaviours of the small business community in relation to usage and usability of modern awards.

The research relied on the principles of citizen co-design to explore the usability of modern awards by considering matters relating to their format, content structure, language, and usability (known as 'information architecture').

A series of six group discussions and ten depth interviews were conducted with small business operators, resulting in a total of 47 individual participants in the study across a range of industries. The research was conducted in Victoria and New South Wales (NSW), across metropolitan and regional locations, from 17 June to 9 July 2014. The sample was split by business size (1-8 and 9-19 employees) and level of familiarity (more or less familiar) with modern awards. In all sessions, respondents explored a range of current modern awards and then compared these experiences with an exemplar modern award. The information architecture was further examined via a series of tasks that participants were asked to complete.

Consistent themes emerged across regional and metropolitan employers. These themes were also consistent across Victorian and NSW participants. Essentially, small business operators in this study faced similar challenges in relation to the modern awards.

As the study was qualitative in nature, the findings cannot be generalised across the entire small business community.

Key Findings

The small business operators that participated in this study worked in a world of constant challenge and change. Increasing demands of customers, a more aggressively competitive market, increased burden of administration, the constant change of regulation and a more assertive workforce, were noted by participants as characteristic of their business world.

Participants' priority focus was to maintain business profitability, and all activities were considered in this context. They sought to minimise any distractions from their core business activities.

The information needs of participants were clear, they sought; **certainty, efficiency, ease and support.**

Small business operators that participated in the citizen co-design activities appreciated the opportunity to share their sentiments on the modern awards. The existing layout of the modern awards elicited negative sentiment and was considered daunting by some participants. The documents were seen as difficult to use, but in-line with their low expectations of a government, regulatory/policy document, i.e. complex and challenging.

¹ *The Fair Work Act 2009 (Cth) requires the Fair Work Commission to conduct 4 yearly reviews of all modern awards.*

The key information architecture components of the modern awards considered in the fieldwork, such as layout, content structure, language and ease of use, were considered to be:

- **Convolutd...** Too long and unwieldy, suggesting a time intensive and difficult process.
- **Complex...** The language was difficult to understand, with 'legalese' and jargon.
- **Ambiguous...** Information provided was not clear, requiring too much interpretation.
- **Of questionable relevance...** Difficult to identify which award was most relevant when employees' roles varied and did not clearly fit into a single industry.
- **Not for them...** Written for the benefit of "bureaucrats and lawyers", with no consideration of end-user needs or capability.

There was very little confidence in the current modern awards. This lack of certainty was disempowering for small business owners in the study, and had led to some active avoidance.

Information architecture clearly played a critical role in helping to facilitate understanding of and willing interest in using documents in which content was considered inherently difficult.

The exemplar modern award represented a significant improvement, and the small business operators that participated in the citizen co-design activities appeared genuinely impressed. Most importantly, these small business owners found that the changes made the document appear more accessible and less intimidating. The stand out improvements included:

- reduced length;
- clearer table of contents, i.e. with the amendment listing removed;
- increased use of tables;
- inclusion of examples;
- simpler language; and
- a reduced need for interpretation and calculations (of wages).

The exemplar modern award appeared to build the participants' confidence that they could effectively use the modern awards, and would have greater certainty in referencing the required information.

However, it was clear from the focus groups and depth interviews that there was opportunity to improve the exemplar further. The following were considered to be improvements that focussed on the information architecture of modern awards, specifically format, structure and language:

- **Ordering of content...** Structure the content to follow an employment contract as closely as possible.
- **Summary tables...** At the start of each section a summary table highlighting the key information.
- **Avoiding calculations...** Minimise the need to apply formulas.
- **Paragraph and content spacing...** Less text-heavy, with shorter paragraphs and more space between content.
- **Table of contents...** Clear labelling of clause numbers versus page numbers.
- **Short titles...** No more than two subject areas per title in the table of contents.

The public value proposition of making modern awards user-friendly is significant, including, but not limited to, improving voluntary compliance levels with modern awards by small businesses through lowering a barrier to compliance.

A key implication of the current modern award information architecture is that low expectations and poor experiences were acting as barriers to using the modern awards for the participants. At the same time, participants were acutely aware of needing to adhere to and follow the modern awards.

To manage this apprehension, most participants reported simply paying a little above modern award pay rates as a form of insurance, so they didn't get caught out. They also reported providing basic holiday and leave entitlements but relied on reaching some understanding with employees about many of the other provisions around breaks and penalties. Some participants were changing their employment practises in order to avoid dealing with the modern awards, i.e. not hiring or moving toward contract labour.

In summary, the challenges faced by the smaller end of the business community suggest that regulatory documents will struggle to have optimal impact if not presented in a manner that demonstrates an appreciation of the needs and capabilities of the end-user. Information that is too hard to deal with may result in 'best guess' solutions or avoidance of the document altogether.