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EMPLOYMENT LAW



Productivity Commission delivers final report into Australia's workplace relations framework to Coalition Government

By Ben Duggan

In the days before Christmas the Coalition Government released the Productivity Commissions (PC) final report in relation to the institutions, laws and practices of the Australian workplace relations framework to the public.

The final report marked the PC's completion of its inquiry into the workplace relations framework in response to a request from the Abbott Government made in late 2014.

The Abbott Governments request had asked for an inquiry into the impact of the workplace relations framework regarding a wide range of matters including:

- unemployment, underemployment and job creation
- fair and equitable pay and conditions for employees, including the maintenance of a relevant safety net
- productivity, competitiveness and business investment
- the ability of business and the labour market to respond appropriately to changing economic conditions patterns of engagement in the labour market
- the ability for employers to flexibly manage and engage with their employees
- barriers to bargaining
- industrial conflict and days lost due to industrial action
- appropriate scope for independent contracting.

In its final report the PC confirmed the conclusion reached in its draft report released in August 2015 that the framework was not "dysfunctional" but that there was a need for reform of the workplace relations framework.

A total of about 60 recommendations for reform of the institutions, laws and practices of the workplace relations framework are contained in the PCs final report.

Interestingly it is only the recommendations about the Fair Work Commission (which in particular call for its wage determination function to be performed by a separate body) that propose wholesale change of an aspect of the workplace relations framework.

A recommendation regarding the reduction of Sunday penalty rates¹ provided support for employer groups push for this change, which is scheduled to be considered by the Fair Work Commission during 2016.

The PC's recommendation to reduce Sunday penalty rates also received significant media attention leading to this topic been debated at Christmas lunch around the country.

In local news a recommendation was made that South Australia, along with several other States, take action to address the issue of restrictive shopping hours.

Our list of the PC's top 10 recommendations of the institutions, laws and practices of the workplace relations framework from the final report are contained in the table below.

¹ By aligning Sunday penalty rates to those applying on Saturdays.

Comment

A number of stakeholders and commentators have been critical of the final report some of it reflecting a strong view that the PC wrongly concluded that the workplace relations framework is not "dysfunctional."

Such criticism, even if justified, should not detract from the merits of the PC's recommendations many of which address either productivity or practical issues² in the current workplace relations framework such that they are worthy of serious consideration.

The new Turnbull Government's initial response to the PC's final report has been to indicate that there is a need for further consultation with stakeholders.

Employers will await with interest the outcome of the consultation which is expected to take place during the first quarter of 2016.

The Government's commitment to workplace reform by adopting any of the workplace reforms recommended by the PC will be tested in the absence of consensus from the proposed consultation.

We will keep you informed of the progress of the response to the PC's final report including its recommendations in the lead up to the next Federal election.

² Such as several of the recommendations regarding Industrial Disputes.

Top 10 Recommendations from the Productivity Commission Report

Topic	Recommendation	Summary
Institutions	3.1	A new institution, the Workplace Standards Commission, with responsibility for the regulation of minimum wages and Modern Awards.
Repairing Awards	8.3	A new Modern Awards objective requiring the wage regulator to ensure that the safety net ¹ provide for a minimum wage which promotes the overall wellbeing of the community including through the consideration of: <ol style="list-style-type: none"> a. The need to increase employment and b. The needs of consumers.
Weekend Penalty Rates	15.1	The harmonisation of penalty rates for Sunday work with those applying on Saturday for permanent employees in the hospitality, entertainment, retail, restaurant and café industries.
Unfair Dismissal	17.5	The removal of the emphasis on reinstatement as the primacy goal of the unfair dismissal provisions in the Fair Work Act (Cth) 2009.
Enterprise Contract	23.1	A new form of employment instrument, the Enterprise Contract, that would allow businesses the flexibility to vary a Modern Award for a class of employees to suit their business operations.
Alternative Forms of Employment	25.2	The prohibition of the ability of enterprise agreements to include terms that restrict the engagement of independent contractors or casual workers.
Transfer of Business	26.1	The amendment to existing transfer of business provisions so as to more easily enable new employers to avoid the transfer of existing arrangements to their business operations. ²
Industrial Disputes	27.5	The amendment of the FW Act to enable an employer who has implemented a contingency plan to stand down a group of employees where there is a late withdrawal of their proposed notice of industrial action.
Industrial Disputes	27.7	The explicit authorisation under the FW Act of more graduated forms of protected industrial action in response to employee industrial action. ³
Competition Policy	31.1	Fair Work Building and Construction granted the power to investigate and enforce the secondary boycott provisions of the Competition and Consumer Act (Cth) 2010 in the building and construction industry. ⁴

¹ The Modern Awards together with the National Employment Standards.

² Including by providing the Fair Work Commission with more discretion to order that an arrangement such as an enterprise agreement does not transfer where that improves the prospect of new employment.

³ Including the ability to institute limits or bans on overtime.

⁴ A shared jurisdiction with the Australian Competition and Consumer Commission.



MORE INFO

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