

Productivity Commission Recommends Repair Of Workplace Relations System. Says It's Not Broken

The Australian Productivity Commission has stopped short of recommending wholesale replacement of the current legislative and institutional system underpinning workplace regulation in Australia. Rather, it has opted for what it describes as repair of some of the institutional structures and legal procedures applied in setting national minimum wages and conditions of employment.

[The Workplace Relations Framework - Draft Report](#), initiated by the Australian Government earlier this year, has been released for public comment. The Productivity Commission Chairman, Peter Harris stated:

"Despite sometimes significant problems and an assortment of peculiarities, Australia's workplace relations system is not systemically dysfunctional. Many features work well — or at least well enough — given the requirement in any system for compromises between the sometimes conflicting goals of the parties involved... The key message of this inquiry is that repair, not replacement, should be the policy imperative. The adapted system needs to give primacy to substance over procedure, rebalance some aspects of the system that have favoured some parties over others, and revitalise its principal regulator."

Some of the more significant recommendations of the Report include:

- Amend the National Employment Standards so that employers are not required to pay for leave or any additional penalty rates for any newly designated state and territory public holidays
- Remove the emphasis on reinstatement as the primary goal of the unfair dismissal provisions
- The Fair Work Act should require that general protections and workplace rights complaints are made in good faith; and that the Fair Work Commission must decide this via a preliminary interview with the complainant before the action can proceed and prior to the convening of any conference involving both parties.

- Change the penalty regime for unfair dismissal cases so that:
 - an employee can only receive compensation when they have been dismissed without reasonable evidence of persistent underperformance or serious misconduct
 - procedural errors by an employer should not result in reinstatement or compensation for a former employee, but can, at the discretion of the Fair Work Commission, lead to either counselling and education of the employer, or financial penalties.
- Introduce a cap on compensation for general protection and workplace rights applications
- Sunday penalty rates that are not part of overtime or shift work should be set at Saturday rates for the hospitality, entertainment, retail, restaurants and cafe industries.
- Weekend penalty rates should be set to achieve greater consistency between the hospitality, entertainment, retail, restaurants and cafe industries, but without the expectation of a single rate across all of them.
- Unless there is a clear rationale for departing from this principle, weekend penalty rates for casuals in these industries should be set so that they provide neutral incentives to employ casuals over permanent employees.
- Terms of enterprise agreements that restrict the engagement of independent contractors, labour hire and casual workers, or regulate the terms of their engagement, should constitute unlawful terms
- Establishing a Minimum Standards Division of the Fair Work Commission to assume responsibility for minimum wages and modern awards. All other functions of the Commission should remain in a Tribunal Division.
- Five-year appointments of presidential members of the Fair Work Commission and performance based reviews for extensions of appointment.

The Productivity Commission will conduct public hearings and accept submissions on the draft report no later than Friday 18 September 2015.

[Download Report](#)

Annual Wage Review Decision 2015

If you hadn't already noticed, the National Minimum Wage (NMW) and modern award minimum wages increased by 2.5 per cent on the first pay period commencing on or immediately following 1 July 2015. The NMW is now \$656.90 per week (\$17.29 per hour). No adult employee may be paid less than this amount.

Justice Ross stated that the Annual Wage Review Panel decided to increase minimum wages to a lesser extent than it might otherwise have done, due to the slower rate of economic growth (including downturn in the Mining sector), higher unemployment, relatively moderate inflation and wages growth over the past twelve months. The Federal Treasurer had also forecast a slower rate of return to the long-term trend in GDP growth of the economy.

Justice Ross said he was satisfied that there was not significant pressure on the cost of employing labour and that social factors such as equal remuneration and the modern award objective of social inclusion justified an increase to minimum wages.

The Panel, once again, rejected the notion of industry-by-industry or award-by-award reviews of minimum wages. Justice Ross said that the current statutory arrangements leaned toward a global approach, although the Panel was entitled to take into account exceptional circumstances prevailing in any particular part of the economy. He believed there were not any exceptional circumstances warranting such an approach this year.

All modern awards have been varied to reflect the increased minimum wages. The decision is expected to affect the wages of approximately 1.86 million award reliant employees.

[\[More\]](#)

Small Business Asset \$20,000 Write-Off

New and second hand assets acquired between 7.30pm on May 12, 2015 and June 30, 2017 can now be immediately written off by small business entities.

Assets costing \$20,000 or more will continue to be deducted over time using a small business pool.

The low pool value threshold will also increase to \$20,000 to allow for an immediate deduction if the pool balance is less than \$20,000 at the end of an income year.

The 'lockout' rule has been suspended until the end of June 30, 2017. This means small business entities that have previously elected out of the simplified depreciation

regime can now re-enter the scheme without having to wait for the 5-year lockout period to lapse.

A small number of assets may not be eligible for the accelerated depreciation, including:

- Horticultural plants;
- Capital works;
- Assets allocated to a low-value pool or software development pool;
- Primary production assets that have been elected to be depreciated under the normal depreciation rules rather than the simplified depreciation rules; and
- Assets leased to another party on a depreciating asset lease.

Tax time Matters - Calculating Work-Related Car Expenses

The Treasurer announced in the 2015-16 Budget that the methods used for calculating work-related car expense deductions would be simplified and modernized. An exposure draft of the amendments is being released for public consultation.

Currently, taxpayers have an option to use one of four methods to determine their work-related car expense deductions. The Government is reducing the number of methods by removing the '12 per cent of original value method' and the 'one-third of actual expenses method'. These methods have been used by fewer than 2 per cent of those who claim work-related car expenses.

The other two methods, the '*cents per kilometre method*' and the '*logbook method*' are being retained. The '*cents per kilometre method*' is also being modernized by replacing the three current rates based on engine size with one rate set at 66 cents per kilometre, which applies to all motor vehicles. The Commissioner of Taxation will have responsibility for updating the rate in later income years.

The amendments apply to the 2015-16 income year and later income years.

Interested parties are invited to comment on the exposure draft amendment guidelines and explanatory statement.

[\[More\]](#)

TIP OF THE MONTH: 5 Ways to Build Productive Relationships With Employees

We would all love to know the secret formula to productive employment relationships for our businesses. You are probably bombarded with tips everyday landing in your mailbox. Nevertheless I reckon there are few simple measures that most employees can apply that will improve the chance of building truly productive relationships with employees. I'm going to share five of them with you taken from my book [HR for Small Business for Dummies](#) .

1. Do Your Homework Before Employing

A job exists for everyone; however, sometimes that job isn't in your business. Doing your homework before you employ is vital to a successful employment relationship. If you haven't identified the personal attributes, skills and ability of the person suitable to your business, you may regret your decision. Remember that you are investing in the person and therefore are looking for the best fit for your business. You want someone that will be fully engaged in life of your business. An employee will be engaged with your business when there is a good match of personal and organisational values and purpose.

So, first tip is to decide the personal attributes, skills and ability required to complete tasks, but also personal values and purpose of candidates.

2. Welcome People into Your Business

Never underestimate the value of a really thorough orientation program when introducing new staff into your business. Getting to know each other, building confidence, explaining clearly your expectations and beginning to understand individual personalities, competency and experience all affects how well the person works with and for you.

The orientation is an opportunity to test your recruitment decision. Did you know that a personal interview of prospective employees is the least reliable indicator of future performance in a job? Use the orientation period to get to know the person. Test their capability and be objective about it. Set specific measurable performance standards. If they don't reach them then cut your losses and look for someone else.

3. Being Decisive Will Earn You Respect

Employees are on the front line of the business responding to customer enquiries, complaints and demands. If you are the one that must make a decision then decide on a course of action promptly, empower your employees to respond and stick to the decision. Don't back track if the heat is turned up on you and make

sure that you support your staff. Empowerment is an overused term, but it is prescient in most productive employment relationships. Daniel Pink in his best selling book *Drive: The Surprising Truth About What Motivates Us*, refers to the desire of people for autonomy, mastery and purpose in the work they perform. So, don't be afraid to give people a go.

4. Celebrate Success

Along the path to business success there are lots of ups and downs. It is important to celebrate the little victories and success along the way. Your employees will appreciate these moments as well; so don't forget to include them in the celebration. I will leave it for you to decide how you celebrate, but a couple of things to remember: money doesn't motivate (but it can be a nice reward for good work) and rewards are appreciated more when they are delivered immediately. Don't wait too long to tell someone they have done a good job.

5. Discretionary effort comes from leadership

Discretionary effort is the key to productive employees. It occurs when employees are committed and fully involved with your business i.e. they are engaged. It can mean working additional hours, assisting other employees and contributing ideas above and beyond their own job tasks.

It won't happen unless you lead the way. Model good behaviour, exhibit the qualities and values that you espouse and see how quickly the discretionary effort happens creating the environment for a productive employment relationship.

Conclusion

The common thread through these five ways to build productive relationships is the concept of engagement. An employee will be properly engaged in your business where they share your values, believe in the goals of the business, are absorbed in the business and are prepared to put in discretionary effort to ensure your business succeeds.

I'm as cynical as the next person when it comes to analysing tips on how to succeed in business. However, the literature on employee engagement is compelling. Discretionary effort reveals itself in multiple productive behaviours. An employee that is fully engaged in your business is flexible, shows initiative and persists to resolve difficult problems. Daniel Pink's three elements that motivate people: autonomy, mastery and purpose fit perfectly within the definition of an engaged employee.

I trust these simple tips can work for you. If you are interested in discussing this further please [contact me](#). You can also buy the [book](#) . Good luck!

In the Commission: What's happening at the Fair Work Commission

There has been a fair amount of activity in the Fair Work Commission. Here are some of the most significant, and interesting and news and events.

4-Year Modern Award Review

Inconsistent award provisions

Various awards have been varied to rectify inconsistencies with the NES. In the initial stages of the 4-Yearly Modern Review the Fair Work Ombudsman identified a significant number of [modern award provisions](#) that conflicted or were inconsistent with the National Employment Standards. In particular, quite a number of award definitions of shift work entitling employees to a fifth week of annual leave were inconsistent with the NES. Consequently, the Fair Work Commission [decided](#) to amend modern awards to correct those inconsistencies. The list of amendments is extensive, so care needs to be taken to firstly review the [Schedule of amendments](#) and secondly, where applicable adjust your payroll and policies. The variations commenced 27 May 2015.

Annual leave

The Fair Work Commission has decided to amend modern awards allowing:

- Individual agreement for employees to cash out 2 weeks annual leave each year, as long as they retain at least 4 weeks accrued leave
- Employers to direct employees to take excessive annual leave where they have accrued at least 8 weeks leave and have not agreed on a time to take the leave.
- EFT payment of wages on normal pay day during annual leave rather than payment in advance in 51 modern awards
- Taking of annual leave in advance of an entitlement to leave accruing, by agreement between an employer and employee.

A model clause allowing employers to direct employees to take annual leave over closedown periods was rejected. However, the Commission said the issue should be dealt on an award-by-award basis.

View the [model cashing out](#) clause and [model excessive annual leave clause](#).

[\[More\]](#)

Defining ordinary hourly rate of pay

On 23 December 2014 the Commission decided to vary the current awards to tidy up the language of awards insofar as they related to take-home pay orders as the 4-year transitional period had expired. In July it followed up this decision with a further decision dealing with a range of additional drafting and technical issues, including the commencement date provision, issues associated with '*absorption clauses*' in modern awards and a number of matters associated with ordinary hourly rates of pay and *all-purpose allowances*

In summary, these changes are as follows:

- Definitions of 'all purpose' and 'ordinary hourly rate of pay' will be inserted into all affected awards. Any issues as to whether a particular payment is payable for all purposes, and, in particular, whether an allowance should be added to a minimum rate before calculating a penalty or loading, will be dealt with on an award-by-award basis.
- The body of the award will contain the minimum hourly rates of pay along with the weekly and/or annual rates of pay that are currently in the award. Where employees are entitled to other all-purpose payments, these will be included in the schedule to the award.
- A note will be inserted into the schedules of awards stating that 'employers who meet their obligations under this schedule are meeting the obligations under the award'.
- Exposure drafts of awards (for consultation) will continue to express terms as '150% of the minimum hourly rate' or '200% of the minimum hourly rate', rather than expressing them as 'time and a half' or 'double time'.

The Commission further decided that it is desirable that there is a consistent method of calculating the casual loading for awards with all-purpose allowances across all awards. It's provisional view is that the casual loading be calculated as 25% of the minimum rate and then the all purpose allowance added after that. Interested parties are provided with a further opportunity to comment on the proposed rule applying across all awards (with an all purpose allowance).

Interested parties are provided an opportunity to make further submissions in relation to the continued operation of absorption clauses in modern awards by Monday 17 August 2015.

[\[More\]](#)

Anti-bullying orders

In an attempt to re-establish safe and constructive working relationships within a workplace, the Fair Work Commission has found that employees were victims of bullying and issued its first formal ruling since the commencement of the Tribunal's anti-bullying jurisdiction in 2014.

The employees of a small real estate business made an application for an order to stop bullying. The employees submitted that they were subject to the same unreasonable behaviour by Ms E.D. including belittling, swearing, yelling and the use of inappropriate language by Ms E.D, as well as daily interference with the employees' work, physical intimidation and threats of violence.

Upon learning of the alleged bullying, Ms E.D was moved to another location and engaged by a related company to ensure that the parties had no work-related contact. The employer submitted that this change had taken place so as to provide a safe work environment for all employees. However, it was conceded by the employer that there was still potential for interaction between the two businesses and their employees.

Commissioner Hampton was satisfied that the employees had been bullied at work and that there was a risk that the employees would continue to be bullied at work by Ms E.D despite her relocation to a different workplace.

[\[More\]](#)

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