



**Small Business  
Development Corporation**

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Review Secretariat  
Ministerial Review of the State Industrial Relations System  
Department of Mines, Industry Regulation and Safety

c/o: [IRReviewSecretariat@dmirs.wa.gov.au](mailto:IRReviewSecretariat@dmirs.wa.gov.au)

To the Review Secretariat

**Interim Report - Ministerial Review of the State Industrial Relations System**

Thank you for the opportunity to respond to the Interim Report of the Ministerial Review of the State Industrial Relations System (the Review).

As outlined in the Small Business Development Corporation's (SBDC) first submission to the Review, the agency provides a comprehensive range of services to support small businesses in Western Australia. The SBDC does not provide specialist advice on industrial relations, preferring instead to refer these inquiries to the relevant agencies or specialist industrial relations consultants. This being said, the SBDC recognises that the industrial relations framework, and changes to it, can have a significant impact on businesses and a direct impact on ease of employment.

The Interim Report seeks feedback on a number of complex components of the State industrial relations system. It would not be appropriate for the SBDC to comment on all aspects of the Interim Report, and as such, this response has been limited to award modernisation, minimum conditions of employment and enforcement.

*Award modernisation*

The Interim Report describes a number of options for undertaking the award modernisation process, and the Review Secretariat has outlined its preferred approach in Recommendation 55. The SBDC considers this approach to be reasonable, and is generally supportive of this recommendation.

The SBDC supports the Western Australian Industrial Relations Commission (WAIRC) undertaking an award modernisation process within three years, reducing the number of awards and creating a new set of industry and occupation specific awards. An added benefit of simplifying and standardising minimum employment requirements through the creation of State Employment Standards, should aid employers in better understanding their employees' entitlements.

As identified in the Interim Report, the award modernisation process must include an opportunity for input from all key parties, including small business employers. It is also important for the WAIRC to be conscious of industrial relations at a national level, particularly in relation to penalty rate provisions for some industries, such as hospitality and retail.

The SBDC acknowledges that the Review Secretariat considers penalty rate provisions to be out of scope for the Review and there is no desire to reduce conditions of employment at this point in time.

This being said, the SBDC believes the WAIRC must consider the interests of both employers and employees in the award modernisation process. It is appropriate for the WAIRC to consider the greater economic benefit of reviewing penalty rates (such as increased employment), and ensuring employers within the State industrial relations system are not in a position of competitive disadvantage when compared to businesses operating within the Federal Fair Work system.

In summary, the SBDC is generally supportive of Recommendation 55, but does not support Recommendation 55(a) - that the current conditions of employment of employees under existing awards are not to be reduced under the New Awards.

#### *Minimum conditions of employment*

The SBDC supports the recommendation of the Review Secretariat to amend the *Industrial Relations Act 1979* to enable the creation of minimum conditions of employment for employees covered by the State system, and for these to be called the State Employment Standards (SES) (Recommendation 47). The SBDC is of the view that the SES will make it considerably easier for employers to find and comply with their industrial relations requirements.

While the SBDC offers its support for the SES, it does not support the recommendation of the Review Secretariat to include an express provision for seasonal workers to be entitled to receive long service leave (Recommendation 49 (b)). The SBDC believes this recommendation will add an unfair administrative and financial burden onto small businesses.

The SBDC understands that the intent of this recommendation is for employees that have worked within the same industry or for the same employer for a defined number of calendar years on a seasonal basis, to be rewarded with the same benefits as a full-time employee. The existence of industry-specific long service leave schemes (including the Construction Industry Long Service Leave Scheme) demonstrates that long service leave portability can be achieved for a particular industry. It is worth noting that the impacts on employers in the construction industry have been kept to a minimum through the establishment of a long service leave fund, which is administered by the Construction Industry Long Service Leave Payments Board.

The SBDC also notes that a number of other jurisdictions (including Victoria and Queensland) have amended their definitions of continuous employment to expressly include seasonal workers.

Until the Government undertakes targeted consultation with employers of seasonal workers and develops a model aimed at minimising the impacts for employers, including the calculation the leave would be based on, the SBDC cannot offer its support to this recommendation. Likewise, any moves to amend the definition of continuous employment can also not be supported at this time.

Keeping in mind the impacts on employers, the SBDC considered the recommendation to expressly provide for casual employees to be entitled to receive long service leave. Casual employees have an important role in the workforce, and provide an avenue for employers to engage workers on an as-needs basis to meet the fluctuating demand for work, and through paying these workers a higher rate, the employer is not required to provide sick leave or annual leave.

Based on the definition of continuous employment in the *Long Service Leave Act 1958*, and the information provided by Wageline, the SBDC understands that casual workers are currently eligible for long service leave. In the interests of clarity for all parties, the SBDC concedes that expressly providing for casual employees to be eligible for long service leave if they meet the continuous employment requirement may make it clearer for employers.

The final comment the SBDC wishes to make in relation to minimum conditions of employment is the Review Secretariat's call for submissions on whether the statutory casual loading ought to be increased from 20 per cent to 25 per cent. The SBDC does not support this statutory change due to the additional costs it would impose on small business employers. It would be more appropriate

however, for the WAIRC to consider rates of pay more generally as it undertakes its award modernisation process or review of minimum wages. In light of recommendations to extend the reach of long service leave, introduce family and domestic violence leave and to not address penalty rates, increasing the casual loading on top of this would not represent a balanced approach to industrial relations reform in Western Australia.

#### *Enforcement and compliance*

The SBDC is generally supportive of Recommendation 58, which seeks to empower industrial inspectors to be able to issue infringement notices, compliance notices and make enforceable undertakings. Enabling inspectors to have a range of enforcement options at their disposal means they can take an approach that best meets the severity of the breach. This is particularly useful when an error has been made unintentionally by an employer and is easily rectified, and going through the court system would be overly costly for all parties involved.

#### *Concluding statement*

The SBDC thanks the Review Secretariat for the opportunity to submit comments on the Interim Report. The SBDC has long advocated for reform of the Western Australian industrial relations system, and is pleased that an award modernisation and consolidation approach has been recommended. It is important that all reforms of the industrial relations system are carefully balanced between the rights of employees and the impacts on employers, particularly when the creation of jobs and diversifying the State's economy is so critical at this point in time.

If the Review Secretariat wishes to discuss any element of the SBDC's submission in more detail, please contact Ms Lauren Westcott, Senior Policy and Advocacy Officer, on 6552 3307 or at [lauren.westcott@smallbusiness.wa.gov.au](mailto:lauren.westcott@smallbusiness.wa.gov.au).

Yours sincerely



David Eaton  
SMALL BUSINESS COMMISSIONER

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