

EXPERIENCE OF BUSINESS UNDER WORK CHOICES

Has the OIR obtained any further information about responses to Work Choices among employers and small businesses?

Suggested response

- The federal government has promoted its Work Choices system as being 'a simpler, national' system which will promote productivity for business. However, in practice, the Work Choices system has introduced considerable complexity and bureaucracy making it costly and often inaccessible to employers.
- Sensis¹ and MYOB² have recently conducted surveys of small and medium businesses in Australia. These surveys asked questions on the attitude and experiences of these businesses with the federal government's Work Choices legislation. The surveys determined that:
 - Only 3 per cent of businesses 'strongly agree' that the new Work Choices legislation will lead to business productivity
 - More than four in five small and medium enterprises were not planning to make any changes at all under the new workplace relations system

¹ Sensis, *Business Index – Small and Medium Enterprises*, August 2006.

² MYOB Australian Small Business Survey, *Special Focus Report: The Accountant-Client Relationship and Industrial Relations*, July 2006.

- 40 per cent of small businesses believe the legislation is unfair and 42 per cent 'agree' or 'strongly agree' that the Work Choices legislation is unfair to low-skilled employees
- 38 per cent of small businesses remain neutral when asked if they are more likely to recruit new employees because of the Work Choices legislation and almost one-third (31%) disagree that the new legislation makes them more likely to take on more staff
- 40 per cent of small businesses have a low level of understanding of the Work Choices legislation and
- 26 per cent of small and medium enterprises felt that the federal government policies worked against them. The key reasons for this were the amount of bureaucracy, the level of paperwork and the belief that the federal government was only concerned with big business.
- The anecdotal evidence indicates the same. The Office of Industrial Relations has received many phone calls from employers who are confused over the changes and who are having difficulties in locating accurate information from the federal government due to its extreme bureaucracy.
- In order to administer the mammoth Work Choices Act and other industrial relations legislation, the federal government has created a plethora of different agencies and schemes. This 'administration' is expected to come at a cost of almost half a billion dollars to taxpayers over the next four years. The agencies and schemes include:
 - Department of Employment and Workplace Relations

- Office of Workplace Services
 - Office of the Employment Advocate
 - Australian Industrial Relations Commission
 - Award Review Taskforce
 - Australian Fair Pay Commission
 - Alternative Dispute Resolution Providers
 - Alternative Dispute Resolution Assistance Scheme
 - Unlawful Termination Assistance Scheme
 - General Employee Entitlements Redundancy Scheme
 - Work Choices Employer Assistance Program
 - Australian Building and Construction Commission
 - various courts and
 - the anticipated Service Contract Review Scheme for independent contractors.
- And to this list must be added the federal Minister himself, who is able to make regulations declaring any terms and conditions of workplace agreements that he doesn't like to be prohibited content, thereby interfering with arrangements freely entered into by the parties.
 - This bureaucracy creates an overwhelming maze for workers and businesses to navigate through in order to locate the information or assistance that they require.
 - Our Office has heard time and time again of instances where employers have attempted to contact the federal agencies and been given the 'run around' from agency to agency in an attempt to answer their question.

- Indeed one employer who contacted our Office informed us that she had contacted the federal Office of Workplace Services over a difficulty that she was having with a staff member. The employer wanted advice on what action she could take. The caller was informed that the Office of Workplace Services was only interested in helping employees and not employers.
- In contrast the Office of Industrial Relations provides help and advice to employers and employees equally. And the New South Wales industrial relations system provides this assistance through just three agencies: the Office of Industrial Relations, the Industrial Relations Commission and the courts. In 2004/5 this entire system cost just over \$40 million to run. This is an accessible, fair and useable system.

Other Complexity Issues

- It is really not surprising that business and employers are struggling with these changes. The Work Choices Act has generated complexity and confusion over even the most basic issues, such as its coverage. Unlike previous federal industrial relations legislation, the federal government has attempted to use the section 51(xx) corporations power in the drafting of the Work Choices Act, rather than the section 51(xxxv) conciliation and arbitration power.
- This attempted use of the corporations power, which is currently under challenge in the High Court, means that all constitutional corporations, defined as trading or financial corporations, are now forced to operate under the Work Choices system.

- However it can be extremely difficult for an employer to know if they are a constitutional corporation. This is particularly the case for not-for-profit businesses and for those in the social and community services sector.
- Even the federal government now recommends that businesses seek legal advice, which can be very costly, to determine their status. This requirement is unfeasible and a ridiculous complication for an employer who simply wants to find out what pay and conditions they should be providing to their staff.
- The Work Choices Act is also highly prescriptive in its control over the interaction between employers and their workers. This means that the process of an employer negotiating working conditions with their staff, for example, has become very complicated.
- An employer will need to have detailed knowledge of the Australian Fair Pay and Conditions Standard, the Australian Pay and Classification Scales, any preserved award terms applying to the employee and knowledge of other awards provisions such as public holidays, rest breaks, incentive based pay, annual leave loading, allowances, penalty rates and overtime loading.
- In addition, the employer will need to ensure that they do not include any prohibited content in their workplace agreement otherwise they could face a \$33,000 fine.
- The Work Choices Act has introduced this extreme level of complexity for employers in conducting their day to day industrial affairs.