The Australian, Australia
09 Aug 2019, by Steve Knott

General News, page 12 - 347.00 cm²
National - circulation 94,448 (MTWTF)

ID 1156393512 BRIEF AMMA INDEX 1

INDUSTRY CHOKES ON FWC GO-SLOW

Nitpicking commission on fishing trips for minor flaws should just do its job

STEVE KNOTT

Enterprise agreement-making in Australia is officially at crisis point. Data released by the Attorney-General's Department last month shows a collapse in the use of enterprise agreements under the Fair Work regime to its lowest level in more than 20 years.

As of last March, there were 10,571 in-term enterprise agreements, compared with almost 25,000 in 2011.

In the same period, the number of Australians whose employment is covered by an EA has dropped by 500,000, despite an additional 1.6 million people joining the national workforce. In total only 12 per cent of Australia's private sector workforce is covered by an EA.

Collective agreement-making at the enterprise level supposedly has been the cornerstone of productive and mutually rewarding workplace relations since the early 1990s.

The fact you need to go back to 1998 to find the last time there were less than 11,000 in-term EAs shows why this area must be the first cab off the rank when Industrial Relations Minister Christian Porter begins his anticipated review of Australia's industrial relations system.

So what has caused this rapid decline in the number of employers and employees using enterprise agreements?

The first problem is the bargaining framework is far too complex for all but the most legal resource-heavy employers to navigate.

Employers must comply with myriad complicated and costly procedures, many of which promote union involvement in business management and/or operational matters, but none that encourages productivity gains.

The framework also allows for bargaining over matters of direct management prerogative, such as provisions requiring an employer to agree with (as opposed to consult) unions over any changes to working hours or rosters; and restrictions on the use of casuals, contractors or labour hire.

The second, and arguably more frustrating problem, is the overly technical and highly inefficient approach of the Fair Work Commission to approving agreements. There are numerous reports of FWC members going on "fishing exercises" to uncover anything that hasn't been explained to employees, and requiring that every single item that is potentially less beneficial than the relevant award to be minutely detailed, despite the legislation not requiring this level of prescription.

One AMMA member company, which provided a 10-page summary of each individual EA clause and its effect, had its application rejected by the FWC, which found the employer was required to explain exactly which provisions of the EA were better than the award and which were not. The award in question was the Building and Construction Award — comprising 146 pages and more than 80 allowance categories.

To further demonstrate the absurdity of this approach, consider the average weekly wage in the resources and energy sector is $2670. The minimum wages for the highest classifications in the Mining Industry Award and Hydrocarbons Industry Award are $1102 and $1009 respectively.

Surely, in an industry that pays on average 2½ times award rates, such an extreme level of comparison between EA terms and award provisions is unnecessary in most cases.

There are also many reports of FWC members applying the "better off overall test" in overly strict, impractical ways, and requiring undertakings about hypothetical, highly unlikely scenarios. For example, one AMMA member, which does not employ any casuals, was required by the FWC to include a casual clause in its EA in case an employee exercised their right to make a request for flexibility; and then was later required to provide undertakings about casual employment.

Other employers routinely are asked to provide an undertaking that they would comply with the National Employment Standards, meaning that they won't break the law.

In short, until Australia's national industrial relations tribunal begins to take a sensible approach to reviewing and approving agreements, enterprise bargaining will continue its steep decline.

The FWC is already falling embarrassingly short of its 32-day benchmark for approval times — averaging 76 days at the last reporting period, despite being given additional resources at the end of last year.

It is common for employers and employees to be waiting more than six months for their

The Australian, Australia
09 Aug 2019, by Steve Knott

General News, page 12 - 347.00 cm²
National - circulation 94,448 (MTWTF)

ID 1156393512 BRIEF AMMA INDEX 1

agreement to be approved. Such delays reflect a poorly managed, overly bureaucratic public service light years behind modern business practices in the 21st century. When you can order a part from Europe and have it delivered and installed in Australia within a week, surely a well-resourced administrative body such as the FWC could assess and approve an EA in the same timeframe.

If the minister is to address areas of productivity-stifling bureaucracy, the type of which is delaying employees from receiving pay rises and eroding competitive advantage of Australian businesses, the performance of the FWC must be up for serious review.

Enterprise agreement-making is not dead in Australia but it does need resuscitation.

Steve Knott is chief executive of Australian resources and energy group AMMA.

Until Australia's national industrial relations tribunal begins to take a sensible approach to reviewing and approving agreements, enterprise bargaining will continue its steep decline