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Rules for the IR club have changed

The economic crisis has achieved what nothing else could in abruptly upending the arcane, stultified world of Australia's industrial relations system.

A range of unions and employer groups are co-operating rather than arguing over changing conditions of work and pay. The Fair Work Commission is actually moving relatively quickly to try to improve rather than reduce the flexibility of awards and employment terms.

According to Industrial Relations Minister Christian Porter, there has been the sort of reform in the award system within three weeks that otherwise might take 30 years – which he says has been crucial to saving tens of thousands of jobs. He singles out the ACTU and several unions for praise just as much as employer groups negotiating “quietly and co-operatively” for “commonsense” changes for 2 million workers.

“There are no more unions or bosses, there are just Australians,” Scott Morrison said yesterday.

But the depth and speed of the financial disaster engulfing so many businesses means the increased workplace flexibility – with more to come – may still not prove fast or far-reaching enough to allow a lot of companies and their jobs to survive.

That is despite the extraordinary and welcome level of government assistance, such as the JobKeeper payment now on offer, backed by the new willingness of all parties to contemplate big changes in working conditions, at least on a temporary basis.

The Fair Work Commission, for example, will now allow most employees to take two weeks of unpaid pandemic leave while also allowing companies to require their employees take annual leave at half pay.

Employers and relevant unions have separately negotiated changes to the hospitality, retail and clerks' awards

covering around 2 million people.

These make it possible, for example, to reduce minimum hours, to have people work from home for different hours than usual, including at night, or require employees to take annual leave.

The Fair Work Commission is also inviting companies and workforces operating under enterprise

agreements to apply for variations to those agreements, which will be dealt with in an expedited manner.

And it is also planning to use a current case involving a Queensland company wishing to scrap a 3 per cent pay rise – with the agreement of 80 per cent of its employees on an enterprise agreement – to establish broader principles for potential pay cuts.

But despite the worthwhile nature of such changes in this fast-moving fight for survival, the sclerotic nature of Australia's industrial relations system is still likely to mean unaffordable delays in implementing many proposals more generally.

There are, for example, 121 different awards. While industry groups and unions are frantically negotiating changes in most of them, some industrial relations experts and businesses believe individual award applications will simply take too long

for companies in extremis. They want the same changes already negotiated for the three awards affecting employees in retail, hospitality and those operating under the clerks' award to apply across the board.

Alice DeBoos, managing partner of workplace law firm Kingston Reid, says that rather than wait for industry group applications, the Commission should immediately introduce similar fundamental changes to all awards – while allowing exceptions to the general rule as required.

“This does not assist employers with enterprise agreements but,

nonetheless, would have a significant impact across the economy,” she says. “Awards and legislation were not (understandably) written with these extreme circumstances in mind and trying to shoehorn today's scenarios into current award and statutory provisions is unsatisfactory.”

In particular, she wants priority

given to those companies with large numbers of staff who may already be working at home, including the banking, finance and insurance industries.

She is also arguing for more to be done immediately in terms of enforced leave and shutdowns, which now typically require four weeks' notice and sometimes eight.

“In the current environment, this rigidity helps no one,” she says.

Steve Knott, chief executive of the Australian Mines and Metals Association, says there are a lot of good faith consultations but “not enough movement” in terms of companies at risk being able to quickly adapt conditions of employment to survive.

He dismisses the latest Fair Work changes allowing two weeks' pandemic unpaid leave or taking annual leave on half pay as “Micky Mouse” for most companies operating in the mining and oil and gas sectors.

“Employees being prepared to job share, reduce hours and wages, work extended roster cycles, work from home outside ‘normal business hours’ and so forth are often prevented from doing so because of rigid award obligations,” he says.

“With COVID-19 business circumstances sometimes changing on a daily basis, businesses and their employees simply don't have time or resources to spend weeks or months negotiating such matters.”

This concern, of course, also goes to the other largely unspoken issue – whether increased flexibility will



..... actually become more permanent for
the slimmed down businesses able to
eventually emerge from the economic
furnace now burning them.

..... Except for the Small Business
Association, most employers don't
want to risk the current cooperative
mood of Team Australia by even
suggesting this is a possibility.

..... "The reform has been temporary, it's
meant to last for as long as this crisis
lasts," Porter also says.

..... But the whole award and enterprise
bargaining system was in dire shape
before anyone had heard of COVID-19. It
is impossible to imagine Australia will
ever go back to that same style of
straitjacket.

..... *The sclerotic nature of
Australia's IR system
is still likely to mean
unaffordable delays.*