

**Curtin Business School
Graduate School of Business**

**Compliance with Employment-Related Legislation: Challenges for Small
and Medium Businesses in Western Australia**

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Declaration

To the best of my knowledge and belief this thesis contains no material previously published by any other person except where due acknowledgment has been made.

This thesis contains no material which has been accepted for the award of any other degree or diploma in any university.

Signature 

Date 12 December 2016

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Abstract

Small businesses employ an estimated one third of the Western Australian (WA) workforce. With 1.24 million employees in WA at September 2011, this equates to over 400,000 employees in businesses employing fewer than twenty people. All businesses have common law and statutory employment-related legislative obligations and these extend to health and safety, discrimination and industrial legislation. Irrespective of company size, non-compliance is subject to punitive or civil actions. Additional complexities exist with unfair dismissal, sham contracting and the overarching duty of care.

There is evidence of increasing prosecution of small and medium enterprises (SMEs) by the Fair Work Ombudsman and the WorkSafe WA Commissioner. Both Government agencies have mandates to penalise employers who breach employment-related legislative obligations regardless of whether the breach was intentional or in ignorance. While these pecuniary measures aim to protect employees and keep them safe, SMEs may not have access to the expert resources necessary to interpret and implement employment-related legislative obligations.

SMEs are responsible for employing a significant percentage of the WA workforce and therefore their behaviour has a direct impact on the economy. If they are hesitant to hire for fear of unfair dismissal or if they incur unsustainable expenditure to maintain compliance, their growth and hiring trends influence employment levels, economic growth and exports. At the same time, employees have a right to be protected and have access to the employment benefits relevant to their employment.

Australian research into SME responses to employment-related legislative compliance has been undertaken by Employer Associations and Unions and incorporates perceptions of bias. There is also a paucity of Australian and international academic peer reviewed studies specific to SME compliance with employment-related legislation.

The objective of this research was to understand the actions taken by SME owner/managers in WA to comply with their employment-related legislative obligations. This included their knowledge and awareness of such legislative obligations and their willingness to comply. Further, the research explored SME compliance strategies and perceived costs and determined the extent to which supporting resources are utilised. The research puts forward recommendations that identify opportunities for Stakeholders (Government, Unions and Employer Associations) to expand support for SMEs in order to promote success in their understanding of and compliance with employment-related legislation.

Emergent themes from the research were *effort*, *complexity*, *survival*, *trust* and *autonomy*. *Effort* to comply with employment-related legislation was found to be grounded in: the extent to which owner/managers 'assume' the requirements of these obligations, the priority assigned to the obligations, and the level of *effort* invested in accessing and utilising available support resources. The *effort* invested in employment-related legislative compliance was found to influence owner/manager behaviours when they encountered

complexity in interpreting and applying the legislation. Some owner/managers gave up and returned to a position of 'assuming' that they understood their obligations. Others persevered and continued to search support websites or call hotlines, and a few made the decision to engage fee-for-service expertise. Regardless of the course of action taken by owner/managers when encountering *complexity* in navigating employment-related legislation, *effort* to comply was found to be balanced with business *survival*. Owner/managers were found to be inherently focused on achieving revenue and maintaining profitability and considered employment-related legislative compliance as an overhead rather than a mechanism for improving productivity or minimising potential health and/or safety costs. *Trust* in Government resources was found to influence owner/managers' inclination to invest *effort* in accessing support websites and hotlines. Fundamentally, owner/managers were distrustful of Government agencies that provided a dual role of support provider and regulator. Owner/managers were found to be more confident and comfortable accessing 'trusted advisors' such as friends, family, accountants and business networks, irrespective of their level of expertise in employment-related legislative compliance. Perceptions of over-regulation and desire for self-governance were found to detract from an owner/manager's inclination and *effort* to comply. Owner/managers preferred to rely on the interpersonal relationship between the employer and the employee to come to a mutual agreement on the terms and conditions of employment. In relying on the uniqueness and close proximity of interpersonal relationships in an SME, owner/managers failed to recognise the inherent power inequality between an employer and their employees.

The research presents recommendations for Stakeholders to enhance SME compliance with employment-related legislation and also provides opportunities to further extend this current research.

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Glossary

CCIWA	Chamber of Commerce and Industry Western Australia
COSBOA	Council of Small Business of Australia
CTH	Commonwealth
FCA	Federal Court of Australia
FCCA	Federal Circuit Court of Australia
FMCA	Federal Magistrates Court of Australia
FWA	<i>Fair Work Act 2009</i> (Cth)
FWC	Fair Work Commission
FWO	Fair Work Ombudsman
HCA	High Court of Australia
GDP	Gross Domestic Product
NES	National Employment Standards
SBDC	Small Business Development Corporation
SMEs	Small and Medium Enterprises
VMC	Magistrates Court of Victoria
WA	Western Australia
WAIRC	WA Industrial Relations Commission

1 INTRODUCTION

1.1 Objectives of the Research

In the 2015/16 financial year, the Fair Work Ombudsman (FWO) recovered over \$27 million in back payments for 11,150 employees as a result of 29,900 alleged instances of non-compliance with the *Fair Work Act 2009* (Cth) (FWA) (Fair Work Ombudsman 2016a). If the media releases published by the FWO in the same financial year are indicative of the demographic spread of alleged non-compliance, nearly all occurrences involved SMEs (small and medium enterprises) (Fair Work Ombudsman 2016).

Defining an SME is not without its challenges as definitions are inconsistent both internationally and within Australia. The Organisation for Economic Co-operation and Development defined a small business as a business with between 10 and 49 employees, with a medium business employing between 50 and 249 employees (Criscuolo, Gal and Menon 2014). Within Australia, the Australian Bureau of Statistics defines a small business as an employer with 1 to 19 employees, and a medium business as an employer with 20 to 199 employees (Australian Bureau of Statistics 2016b). Other definitions for an SME in Australia are found in section 23 of the FWA (“less than 15 employees”), and the Australian Taxation Office (“less than \$2 million aggregated annual turnover”) (Australian Taxation Office 2016). For the purpose of this research, the definition provided by the Australian Bureau of statistics has been applied.

The objective of this research was to understand the actions taken by SMEs owner/managers to comply with their employment-related legislative obligations. The research also investigated owner/manager experiences in navigating their employment compliance requirements and their awareness and use of resources available to them. This included their knowledge and awareness of such legislative obligations and their willingness to comply. Further, the research explored SMEs’ compliance strategies and perceived costs (for example, internal and external financial costs, time and opportunity cost) and determined the extent to which supporting resources are utilised. In doing so, the research puts forward recommendations that identify opportunities for Stakeholders (Government, Unions and Employer Associations) to expand support for SMEs in order to promote success in their understanding of, and compliance with, employment-related legislation.

1.2 Research Questions

This research sought to add to existing research on employment-related legislative compliance by SMEs. This qualitative study examined the responses provided by 41 SME owner/managers and nine (9) Stakeholders in order to achieve the research objectives. Phase One of the data collection involved face-to-face semi-structured interviews with Stakeholders. Phase Two built on those observations with Government, Union and Employer Association Stakeholders through further semi-structured interviews with SME owner/managers. Metropolitan interviews were conducted face-to-face and telephone interviews were used for regional owner/managers. The three questions the research sought to explore were:

1. What advantages and challenges do SME owner/managers perceive in meeting their employment-related legislative obligations?
2. What actions are taken by SMEs to meet employment-related legislative obligations and what is their awareness and use of the support strategies available to them? Also, what costs do they associate with compliance?
3. What additional support services do SMEs want in order to support their compliance with employment-related legislative obligations?

Like all organisations, SMEs need to understand the legislation relevant to them and their obligations at common law. At times, compliance is subject to both Federal and State employment-related legislation and this requires organisations to understand and comply with a legislative landscape which is both extensive and arguably complex.

To date, there have been limited studies into SME compliance with employment-related legislation. Studies that have been undertaken imply scepticism with regard to the level of knowledge and inclination to comply within SMEs. Massey and Campbell (2013) found error rates of between 15 per cent and 96 per cent when they surveyed 80 SMEs on their knowledge of the *United States Fair Labor Standards Act 1938*. The survey asked ‘yes’ or ‘no’ questions across a range of employment-related legislative matters and the results found significant lack of knowledge across a number of basic employment obligations. The cost of meeting compliance obligations was examined by Warfield and Stark-Jones (2012, 23). Warfield and Stark-Jones cited a 2010 study by the United States Small Business Administration Office of Advocacy which estimated, “small businesses with fewer than 20 employees pay approximately 36 per cent (or approximately \$3,800) more per employee for regulation compliance than do larger firms with 500 or more employees”.

This exploratory study sought to engage directly with SME owner/managers in Western Australia (WA) to discover factors that helped and hindered their understanding of their employment-related legislative obligations within the current framework (

Figure 1-1).



Figure 1-1: Australian Employment Law Framework

1.3 Significance

Research drawn from SMEs' data to date have used a combination of methodologies, including quantitative surveys, semi-structured interviews, analysis of case law, and analysis of anecdotal and secondary evidence. Williams (2006) and Freyens & Oslington (2007) report that there is insufficient evidence to support legislation that would lessen unfair dismissal obligations for SMEs. However, Kutasi (2010, 5) claims unfair dismissal "frightens" small businesses, and a 50 per cent increase in Employer Association membership is a direct result of concerns over the (FWA).

Of the 224,993 businesses in operation in Western Australian (WA) at 30 June 2016, 62.2 per cent were classified as 'non-employing', 34.7 per cent were small businesses, 2.9 per cent were medium businesses, and only 0.2 per cent employed over 200 people and were classified as large employers (Small Business Development Corporation 2016). From an economic perspective, SMEs are responsible for a third of all business expenditure on research and development in Australia (Australian Bureau of Statistics 2011b), make up 90 per cent of all Australian exporters (Australian Bureau of Statistics 2011c), and contributed 46 per cent of the Gross Domestic Product in 2006 (Australian Bureau of Statistics 2010a).

Following the introduction of the FWA, a 'spike' in unfair dismissal claims prompted the Victorian Employers Chamber of Commerce to comment, "employers now more than ever are being tied up in matters before Fair Work Australia, costing them time and money" (Hannan 2011). There has been little change in the volume of claims over time, and in 2015/16 the Fair Work Commission dealt with 14,694 unfair dismissal claims (Fair Work Commission 2016a). Additionally, the new occupational health and safety 'harmonised' legislation is well represented in the Work Health and Safety Bill 2014 (WA) which is expected to supersede the State *Occupational Safety and Health Act 1984* (WA). All indications are that the new occupational health and safety legislation will increase employer obligations and introduce higher penalties for non-compliance (Schofield, Reeve & McCallum 2014).

Non-compliance has been costly for SMEs found to be in breach of the FWA. For example, Kentwood Industries was fined \$123,000 and ordered to remedy underpayments totalling over \$300,000 (*Fair Work Ombudsman v Kentwood Industries Pty Ltd (No 3)* [2011] FCA 579). Likewise, a cleaning business was fined \$288,000 for underpaying two employees less than \$4,000 over the course of their employment (*Workplace Ombudsman v Saya Cleaning Pty Ltd & anor* [2009] FMCA 38). Research into the enforcement of minimum employment standards in Australia (Howe, Hardy & Cooney, 2014) identified that over 60 per cent of FWO litigation in the 2011/12 financial year involved small business, and nearly 30 per cent related to medium businesses. In discussing this data, the researchers offered two perspectives: non-compliance was more prevalent in small business; or, the FWO targeted small businesses.

This exploratory research had the objective of discovering information that could better inform Stakeholders about employment-related legislative compliance by SMEs in WA.

These Stakeholders include (though are not limited to): Government bodies such as the FWO and the Small Business Development Corporation; WA Union State secretaries; and Employer Associations such as the Chamber of Commerce and Industry. The research sought to determine the perceived advantages and challenges to SME compliance with employment-related legislative obligations. By being aware of SME perceptions, Stakeholders have the ability to consider these opinions, experiences and beliefs in the development of Government policy and industry support.

Existing literature into SME compliance with employment-related legislation is well represented in Government, Union and Employer Association commentary (c.f., Australian Hotels Association and Accommodation Association of Australia 2015; (Australian Government Productivity Commission 2013; ACTU 2012; Keating 2015). Australian and International academic enquiry also exists, but is limited. There are insufficient findings from existing qualitative research (c.f., Anderson and Ullah 2014; Buultjens 2003; Todd and Hutchinson 2011), which allow these findings to be measured quantitatively. Therefore, this qualitative exploratory research using semi-structured interviews permitted SME owner/managers to tell their own stories and describe their experiences in meeting employment-related legislative compliance. Inductive analysis of the 'in vivo' interview responses was then undertaken to allow emergent themes to develop and research findings evolve.

The research sought to establish owner/managers' perceptions of the cost of compliance of employment-related legislation. Knowledge of the perceived real and opportunity cost of SME compliance will allow the Government to consider this dimension when introducing legislative changes that are complex or transformational. It is hoped that factors such as lead time, support and transitional arrangements will be considered by the Stakeholders who seek to assist both employers and employees with employment-related legislative changes. Finally, the research sought to establish SME knowledge and usage of existing support services; it also sought to establish what other support services SMEs desired and whether or not they would avail themselves of such services.

1.4 Research Theory

The literature review identified a paucity of academic enquiry into the experiences and behaviours of SME owner/managers when seeking to meet employment-related legislative obligations. This led to the adoption of a phenomenological research approach to support this exploratory study. Phenomenology is concerned with the study of experience and the premise that what we are told is reality (Moustakas 1994). This phenomenological research sought to learn from the lived experiences of SME owner/managers when navigating their employment-related legislative obligations, and to understand their behaviours and perceptions. It is the "deep involvement with the research context" that enables a phenomenological qualitative research approach "to develop theory based on inductive analysis of a real dataset" (Mansourian 2008, 284).

This qualitative research thesis is presented over seven Chapters, an overview of each Chapter and its purpose is summarised in the following Sections.

1.5 Thesis Structure

1.5.1 Chapter 1 - Introduction

Chapter One provides the background and significance of the research. The research objectives and research questions are also outlined.

1.5.2 Chapter 2 – Literature Review

Chapter Two examines a body of literature that has sought to study the relationship between SMEs and regulatory compliance. Given the paucity of research, this literature review extended beyond employment-related legislative compliance amongst SMEs and considered the characteristics of SME owner/managers in navigating their compliance obligations.

The literature review examines the employment-related legislative framework in Australia and this is considered from both a historical and current perspective. Australian and international research is then examined and this review extends to studies of owner/manager characteristics and also findings as they relate to compliance behaviours and experiences with employment-related legislation.

1.5.3 Chapter 3 – Methodology

Chapter Three outlines the research methodology and the substantiation for selecting a qualitative research approach. The Chapter also describes the data sampling, data collection and data analysis used in this research. This research was exploratory; therefore, the ontological assumption was constructivist, whereby knowledge emerged through the researcher's interaction with the participants (Guba & Lincoln 1994). A phenomenological research approach was adopted to source participant perceptions and experiences (Merriam 1988).

1.5.4 Chapter 4 – Data Analysis

Chapter Four describes the coding framework that underpinned the data analysis stage of this research. Data analysis commenced with the interview transcripts of Stakeholders and SME owner/managers participants and progressed through numerous iterations of preliminary descriptive codes, codes and emergent themes. Chapter Four presents this process of data analysis.

1.5.5 Chapter 5 – Findings

Chapter Five presents the research findings that resulted from the data collection and data analysis stages of the research. In this Chapter, the themes that emerged from the experiences and observations shared by Stakeholder and SME owner/manager participants are presented.

1.5.6 Chapter 6 – Discussion

Through the data collection, data analysis and development of emergent themes, Chapter Six discusses the conclusions to the research questions. Primarily the discussion is centred

on commentary from SME owner/managers; although, Stakeholder perceptions and observations are also discussed.

1.5.7 Chapter 7 – Conclusions

Chapter Seven provides a summary of the research findings and the conclusions to the research questions. Recommendations, research limitations and opportunities for future research are also discussed in the context of employment-related legislative compliance in SMEs.

2 LITERATURE REVIEW

2.1 Introduction

Non-compliance with employment-related legislative obligations can result in financial and reputational damage for an organisation. There is sufficient case law reflecting intolerance of employers who use size or inaccessibility to expert resources as a defence to non-compliance. Magistrate Hawkins stated, "...there is a need to send a message to the community at large, and small employers particularly...steps must be taken by employers to ascertain and comply with minimum entitlements. Compliance should not be seen as the bastion of the large employer" (*Fair Work Ombudsman v Bosen Pty Ltd and Others (Industrial)* [2011] VMC 21 at 51). Nonetheless, there is limited research into the ability and willingness of SMEs to comply with employment-related legislative obligations.

SME working relationships are less formal than those formed in large businesses and often based on friendship between the owner/manager and their employees (Lai et al. 2015). This informality extends to human resource practices, with SME owner/managers found to prefer a common sense approach to employment relations (Debrah and Mmieh 2009). Nonetheless, SME owner/manager attitudes and behaviours cannot necessarily be generalised and their characteristics are as diverse as the general population (Curran and Blackburn (2001).

Government agencies in Australia and internationally provide resources for SMEs with the objective of supporting them in meeting their legislative and regulatory obligations. In Australia, the FWO and the Fair Work Commission provide website and hotline resources for employers and employees, as does the Australian Taxation Office and various Federal and State small business agencies. New Zealand research by Samujh (2008) found that small businesses use factors such as trust and prior experience when deciding whether or not to interact with a Government agency. Further, examination into SME interactions with Government-led initiatives in the Maldives and Mauritius (Sambajee and Dhmun 2015), also found that SMEs are reluctant to take advantage of potential business benefits because of their distrust in Government. Finally, New Zealand research by Lewis and colleagues (2007) and Coetzer and colleagues (2011), refers to "support infrastructure" when discussing how well SME owner/managers access (or do not access) business resources available to support them, from Government, non-Government and private sector sources. In contrast to accessing expert and 'no cost' advice from more formal sources, Coetzer and colleagues (2011) report that SME owner/managers instead access 'trusted advisors' for information, a finding that is evident from this current research.

This Chapter examines the literature underpinning this research into employment-related legislative compliance by SME owner/managers. The literature review commences with presentation and examination of the employment-related legislative framework in Australia in order to elucidate the depth and relative complexity of SME compliance obligations. The review then considers the historical development of employment law in Federal and State Western Australian (WA) jurisdictions and the current regulatory framework.

Australian research into SME employment-related compliance is examined and this includes a review of owner/manager characteristics and attributes in the context of their general inclination to comply with Government regulations. This is followed by a review of international SME compliance behaviours and attributes and the review recognises opportunities for further research into SME employment-related legislative compliance in an Australian context.

Finally, the primary Stakeholders (Government, Unions and Employer Associations) are defined and discussed in the context of their respective roles and influences in the area of employment law formulation, observation, commentary and enforcement. Pecuniary penalties are also discussed in relation to enforcement and regulation.

In summary, Figure 2-1 provides a diagrammatical representation of the Chapter's content.

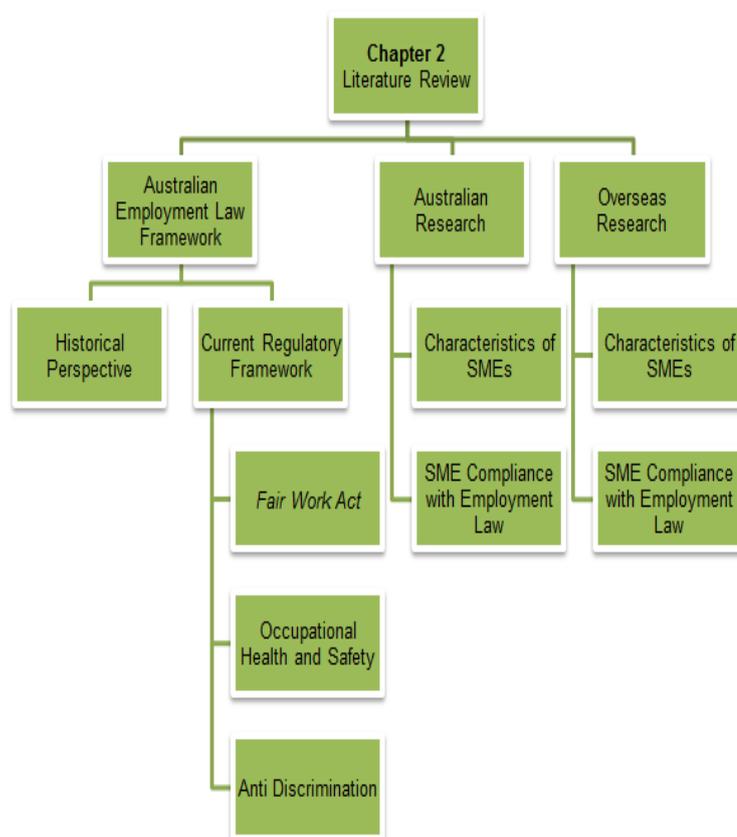


Figure 2-1: Chapter Map

2.2 Employment Law Framework

Consistent with the obligations of their larger counterparts, SMEs are required to understand both the employment-related legislation relevant to them and their obligations at common law. At times, compliance is subject to both Federal and State employment-related legislation and this requires organisations to understand and comply with a legislative landscape which is both extensive and arguably complex.

To put the employment law landscape into context, Federal legislation reflects our obligations as a signatory to international agreements and treaties. Such international obligations include the International Labour Organisation (ILO) conventions and recommendations, and the International Human Rights Commission Conventions. Additionally, each State has extended Federal legislation and this has resulted in a series of complex intersections between Federal and State legislation. As an employer navigating the Australian employment law landscape, it is necessary to comply with the Federal and State legislation discussed in the following Sections.

2.2.1 Discrimination Legislation

At State level in WA, the *Equal Opportunity Act 1984 (WA)* is a single Act which seeks to legislate against discrimination across a number of protected attributes. At the same time, Federal legislation provides a number of single Acts that legislate against discrimination. Additionally, the *Fair Work Act 2009 (Cth) (FWA)* provides anti-discrimination legislation through the general protections provisions of the Act. Federal anti-discrimination legislation prevails where there is inconsistency with the terms of the State legislation, and an employee could have a cause of action against an employer by virtue of (a) the State anti-discrimination legislation; or (b) the Federal anti-discrimination legislation; or (c) the FWA.

2.2.2 Health and Safety Legislation

The *Work Health and Safety Act 2011 (Cth)* provides the basis for ‘harmonised’ health and safety legislation across Australia. Nonetheless, to become legally binding in States and Territories, each jurisdiction must pass their own health and safety legislation. WA is still to enact ‘harmonised’ health and safety legislation to supersede the *Occupational Safety and Health Act 1984 (WA)* which currently legislates employer and employee safety obligations in WA (Schofield, Reeve & McCallum 2014). The WA State Government sought public comment on the Work Health and Safety Bill 2014 (WA) and this consultation period concluded on 31 August 2016 (Department of Commerce 2016a). With the exception of WA and Victoria, the ‘harmonised’ work health and safety legislation has been implemented in all jurisdictions in Australia (Safe Work Australia 2016).

In addition to statutory health and safety obligations, SME owner/managers hold obligations at common law to exercise a duty of care to their workers. While the *Workers Compensation and Injury Management Act 1981 (WA)* is a ‘no fault’ legislation and it is compulsory for employers to purchase workers’ compensation insurance, there are nonetheless circumstances where an employee may seek to pursue a breach of the common law duty of care for negligence.

2.2.3 Industrial Legislation

Industrial legislation in WA is dependent on the jurisdictional coverage relevant to the employer. The *Industrial Relations Act 1979 (WA)* applies to State employers while Federal employers are covered by the FWA. Other industrial instruments relevant to employers in the employment of WA workers extend to the National Employment Standards (NES), modern awards, State awards, enterprise agreements and common law contracts. The

jurisdictional relationship between the *Industrial Relations Act 1979* (WA) and the FWA is discussed in Section 2.3 (Historical Perspective); however, the industrial instruments that interact with Federal and State legislation are considered in the context of potential challenges to SME owner/managers. To assist this discussion, Figure 2-2 and Figure 2-3 provide an overview of the Federal and State jurisdictions respectively.

As an SME owner/manager in WA, industrial obligations with regard to the employment of workers can fall within the Federal or State jurisdiction. Taking a ‘decision tree’ approach to identify the relevant legislative coverage, the SME owner/manager first needs to be aware that a dual Federal and State system exists. On becoming aware of the dual legislative framework, the SME owner/manager can then determine their jurisdiction. That is, if they are a ‘company’ this means they are a ‘constitutional corporation’ and therefore covered by the Federal jurisdiction of the FWA. If an SME is a ‘sole trader’, ‘partnership’ (or, in some instances, a ‘trust’); they are a State employer and covered by the provisions of the *Industrial Relations Act 1978* (WA).

Having identified if the organisation is a State or Federal employer, the next decision point for an SME owner/manager is determining the State award or modern award underpinning their employees’ employment. Employers also need to recognise the prevailing obligations of the National Employment Standards (NES). If SME owner/managers implement common law contracts of employment, they need to understand their obligations in the event that inconsistencies exist between the contract terms and the legislation. Finally, owner/managers are required to meet the Federal or State obligations of long service leave entitlements.

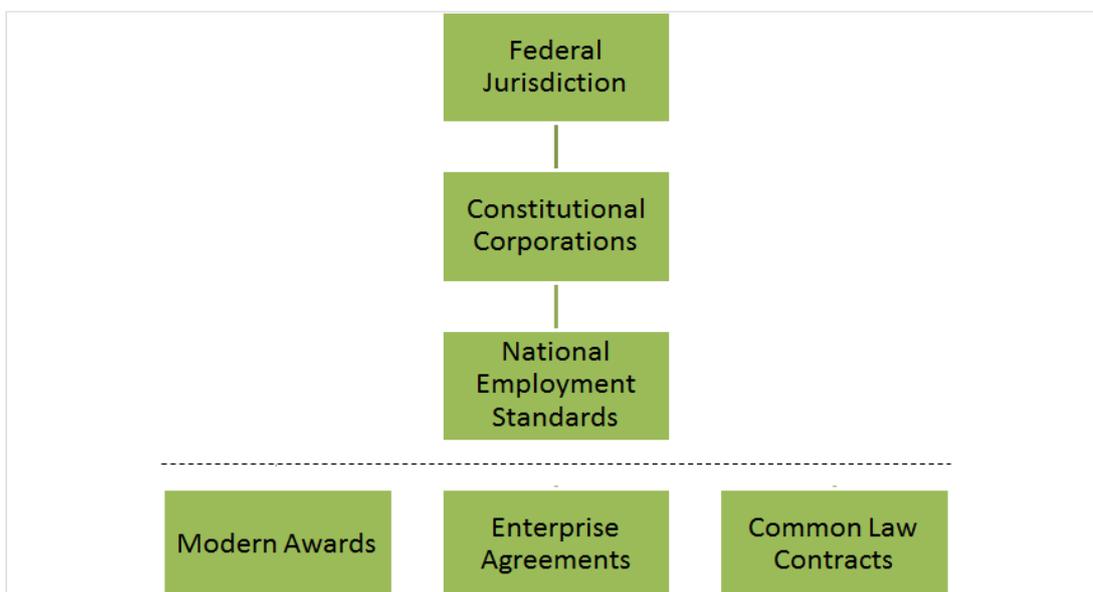


Figure 2-2: Federal Jurisdiction

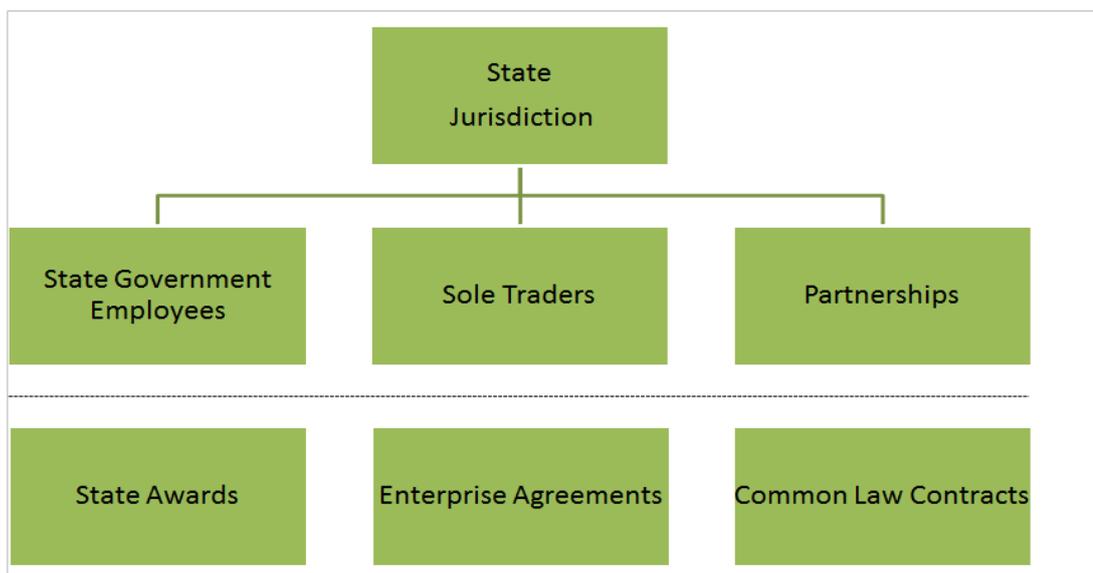


Figure 2-3: State Jurisdiction

2.3 Historical Australian Perspective

The *Workplace Relations Amendment (Work Choices) Act 2005 (Cth)* (Work Choices) legislated that State awards and agreements pertaining to ‘constitutional corporations’ transition from the State industrial system to the Federal system. As a consequence, the industrial coverage given to WA employees employed by a ‘constitutional corporation’ shifted from the *Industrial Relations Act 1979 (WA)* to the *Workplace Relations Act 1996 (Cth)*. While the FWA superseded the *Workplace Relations Act 1996 (Cth)* and removed aspects of the Work Choices amendments that were arguably pro-employer, the new legislation retained coverage of constitutional corporations.

The Commonwealth, Territories and State of Victoria were parties to the Federal industrial relations system at the enactment of the FWA and all States (except WA) referred their industrial powers to the Commonwealth. As the only non-Labor State, the WA Liberal Government sought to avoid what they considered to be a ‘pro-Union’ Fair Work system (Sutherland & Riley 2010). While Western Australia declined to refer industrial powers to the Commonwealth, this did not discharge WA constitutional corporations from the Federal system. In May 2010, 66 per cent of WA employees were covered by Federal industrial legislation, 22 per cent by State legislation, and 12 per cent were undetermined (Australian Bureau of Statistics 2011a). This latter 12 per cent represents approximately 150,000 employees unaccounted for, and the WA Department of Commerce acknowledges difficulty in accurately determining employee jurisdictional division in WA, noting “comprehensive data is unavailable to accurately identify full coverage” (Department of Commerce 2011a).

Statistics published by the WA Industrial Relations Commission demonstrate the impact of the constitutional corporations shift from State to Federal industrial relations jurisdiction. In the financial years 2002 to 2006, the WA Industrial Relations Commission averaged 797 unfair dismissal claims annually and this average dropped to 196 claims annually between 2006 and 2010 (WA Industrial Relations Commission 2010). In the 2013/14 financial year,

only 159 unfair dismissal claims were lodged (WA Industrial Relations Commission 2014). Over the same financial year the ratification of new State enterprise agreements fell from 263 to 63, and applications to vary awards decreased from 206 to 97 (WA Industrial Relations Commission 2010). In the 2013/14 financial year, 30 new State enterprise agreements were lodged; with only 24 applications to vary State awards (WA Industrial Relations Commission 2014).

2.4 Current Australian Regulatory Framework

The Australian employment law regulatory framework is extensive and introduces a wide range of obligations for employers. It is also contended that these obligations are necessary to provide a minimum framework to protect employees in a relationship where the balance of power traditionally rests with the employer (Bailey, Macdonald & Whitehouse 2012).

With the purpose of putting this current research into context, the Australian employment legislation under discussion is presented in Figure 2-4. The detail of this legislation is now explored and considered in the framework of the compliance obligations of SMEs.

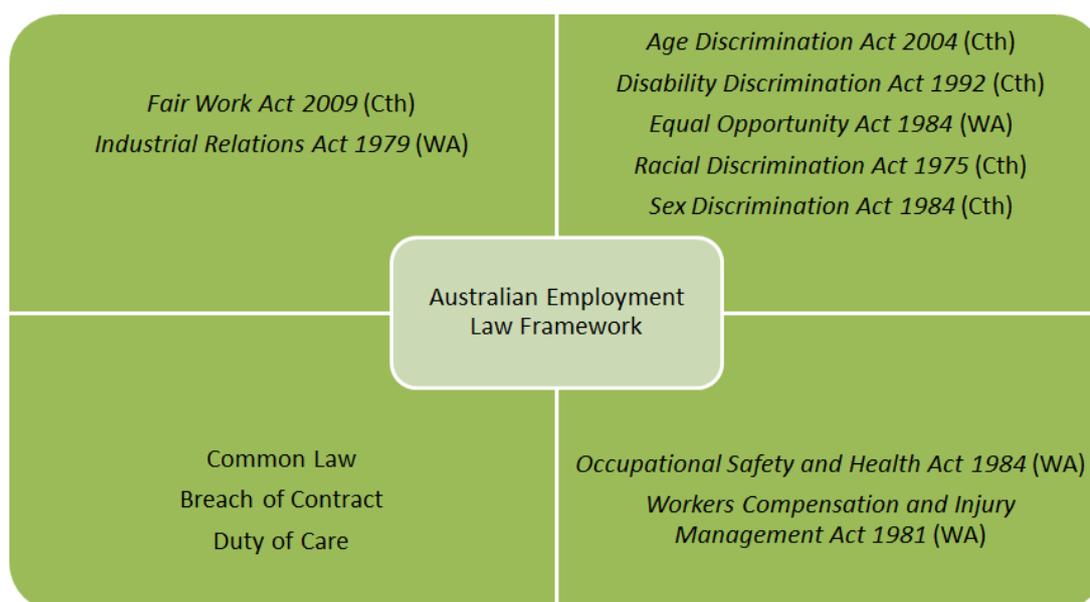


Figure 2-4: Australian Employment Law Framework

2.4.1 Fair Work Act 2009 (Cth)

From the relative constancy of the *Industrial Relations Act 1979 (WA)*, WA employers' compliance obligations transitioned to Work Choices and then to the FWA, requiring management of complex transitional provisions. From an employer perspective, the primary changes introduced by the FWA were as follows:

1. The introduction of 10 NES's forming the minimum standards across a range of employment terms and conditions which cannot be breached by employers.
2. Introduction of modern awards resulting from a consolidation of thousands of Federal or State awards down to 122 modern awards. Importantly, industries that had

previously been without award obligations were required to comply with the provisions of a modern award from 1 January 2010.

3. New unfair dismissal provisions, whereby the unfair dismissal threshold changed. Previously employers with fewer than 100 employees were not subject to unfair dismissal claims by terminated employees. Under the FWA, all employers are subject to the unfair dismissal provisions of the FWA excepting that employers employing fewer than 15 employees have coverage under the *Small Business Fair Dismissal Code*.
4. Expansion of unpaid parental leave resulting in a right to request a further 12 months leave (total of 24 months).
5. Introduction of a 'right to request' flexible work arrangements in certain circumstances.
6. Discontinuation of individual agreements and the introduction of enterprise agreements (arguably bringing mandatory Union involvement back to the bargaining table).
7. General protections that sought to protect employees against adverse action by employers on the basis of a protected attribute (anti-discriminatory legislation) or for exercising a workplace right (for example being a member of a Union, requesting a flexible work arrangement, making a complaint to the employer etc.).

The transitional provisions of the FWA were said to be complex and this evaluation is supported by Stakeholders who participated in this research. Transitional provisions underpinning the introduction of the FWA sought to provide a gradual changeover to the pay rates instigated by the modern award. The intent of the transitional provisions of the FWA was to assist employers; although, the complexity of these arrangements was perhaps under-estimated. A fact sheet developed jointly by the Fair Work Ombudsman (FWO) and the Australian Industry Group is provided in Appendix A. This fact sheet relates to the "Clerks – Private Sector Award" and is a good example of the level of diligence and calculation required by employers during the transition period.

Research by Todd (2011) found that the transitional provisions of the FWA were the primary cause of difficulty and misunderstanding in the application of the new legislation. That is, the research identified factors such as multiple award or agreement starting points and an absence of systems and resources in SMEs that appeared to compound the complexity of transition to the FWA. Peter Strong, Executive Director of the Council of Small Business of Australia (COSBOA) called on the Federal Government in August 2011 to review the FWA, citing complexity, cost and general confusion as inhibitors to the feasibility of the legislation in its original form (Milman 2011). Furthermore, Strong said small businesses were concerned about potential fines if they made mistakes; however, access to information on modern awards and transitional arrangements was difficult to find and difficult to understand.

2.4.1.1 Unfair Dismissal

Section 643(10) of the *Workplace Relations Amendment (WorkChoices) Act 2005* (Cth) prevented unfair dismissal claims if, "...the employer employed 100 employees or fewer". Section 388 of the FWA introduced a material change to this provision by limiting

exemption from unfair dismissal claims to employers with fewer than 15 employees. These employers are still susceptible to claims for unfair dismissal; however, they are potentially able to defend such claims if able to provide evidence that they complied with the *Small Business Fair Dismissal Code*. Forsyth (2008) estimated that the threshold change would provide an additional 4.2 million employees with access to unfair dismissal provisions.

Section 387 of the FWA places a number of obligations on employers when considering whether a dismissal was “harsh, unjust or unreasonable”, and these obligations remain when arbitrating unfair dismissal claims under the *Small Business Fair Dismissal Code*. Unfair dismissal considerations are based on the following measures:

1. Whether there was a valid reason for the dismissal related to the person’s capacity or conduct (including its effect on the safety and welfare of other employees);
2. Whether the person was notified of that reason;
3. Whether the person was given an opportunity to respond to any reason related to the capacity or conduct of the person;
4. Any unreasonable refusal by the employer to allow the person to have a support person present to assist at any discussions relating to dismissal; and
5. If the dismissal related to unsatisfactory performance by the person, whether the person had been warned about that unsatisfactory performance before the dismissal;
6. The degree to which the size of the employer’s enterprise would be likely to impact on the procedures followed in effecting the dismissal;
7. The degree to which the absence of dedicated human resource management specialists or expertise in the enterprise would be likely to impact on the procedures followed in effecting the dismissal; and
8. Any other matters that the FWA considers relevant.

The *Small Business Fair Dismissal Code* (Section 388 of the FWA) is available to businesses with fewer than 15 employees (refer Appendix B), and provided the employer consistently follows the Code, the dismissal will be determined to be ‘fair’. There is nonetheless an abundance of case law where the employer contended that they have adhered to the Code, yet the dismissal has been found to be unfair. A summary sample of these cases is provided in Table 2-1.

Table 2-1: Unfair Dismissal Case Law - Small Business Fair Dismissal Code

Case	Termination was “harsh, unjust or unreasonable”
<i>Eskaf v J & L Salons P/L t/a Julise Beauty Therapy</i> [2015] Fair Work Commission 4890	Commissioner Roe at 31, “the lack of expertise in the small business is not sufficient to outweigh the lack of a valid reason and the lack of procedural fairness in failing to give a proper opportunity to respond”.
<i>Smith v Pedro Kayias P/L t/a Pete's Vehicle Transport</i> [2014] Fair Work Commission 8798	Deputy President Bartel at 28, “the employer is a small business employer so this is a relevant matter to take into account in considering any procedural defects in the process leading up to and including the decision to dismiss. However, as the Code makes clear, certain basic requirements are expected to be complied with. A lack of human resources expertise or advice is not a defence”.
<i>McConnell v Terry White Chemists Victoria Point</i> [2015] Fair Work Commission 4060	Senior Deputy President Richards at 84, “Though the employer had a valid reason for the dismissal, I consider that the process of dismissal - by which Ms McConnell was dismissed at a performance review without prior notice and without any actual opportunity to defend herself against the claim made - to have been harsh”.
<i>Langer v Robert Quinn t/a Pyrmont Car Store</i> [2014] Fair Work Commission 7460	Vice-President Hatcher at 57, “I find that Ms Langer’s dismissal was harsh, unjust and unreasonable. There was no valid reason for her dismissal. She was denied procedural fairness. The reason for her dismissal was fundamentally performance-based, but she was never warned about her work performance or given an opportunity to improve it. She was a low-paid employee who lacked relevant experience and qualifications, was not given any proper training or supervision, and worked in a business which was ill-managed and attended by highly irregular business practices”.

There are a number of factors that can potentially explain why so many dismissals are found to be in breach of the *Small Business Fair Dismissal Code*. The subtlety of the Code may not be fully understood by owner/managers; or, owner/managers attempt to claim compliance with the Code ‘after the fact’. Conceivably, the determinants of whether a dismissal was “harsh, unjust or unreasonable” may not necessarily correlate with the simplicity of a Small Business Dismissal Checklist which forms part of the *Small Business Fair Dismissal Code*.

Unfair dismissal is arguably one of the most controversial aspects of employment legislation. Employers contend that unfair dismissal impedes employment growth and Unions defend the rights of the employee not to be dismissed at will. Williams (2006) evaluated prior research and concluded that there was insufficient evidence to justify excluding small business from unfair dismissal. Taking a contrary view, the Coalition Government forecast that unfair dismissal exemptions would create 77,000 new jobs to

achieve an unemployment rate below five per cent (Forsyth 2008). At the same time, the Australian Council of Trade Unions warned that the proposed WorkChoices legislation would leave 3.6 million employees without access to unfair dismissal provisions and noted "...99 per cent of companies will be able to sack employees indiscriminately" (Australian Council of Trade Unions 2005a, 1).

Media coverage anecdotally refers to SMEs paying 'go away money' to employees in order to circumvent unfair dismissal claims (Australian Chamber of Commerce and Industry 2012, 5). Stewart (2011, 323) concurs, "employers are often prepared to settle claims that they may not consider particularly meritorious, on the pragmatic basis that it is cheaper to make a payout than incur the costs and trouble associated with defending the application". A joint submission by the Australian Hotels Association and the Accommodation Association of Australia to the Productivity Commission's Inquiry into Workplace Relations in 2015 again referenced 'go away money'. Specifically, the submission quoted Fair Work Commission data for the 2013/14 financial year citing 74 per cent of claims being settled with employees (either pre-conciliation or at conciliation). The submission stated that employers "are forced to spend time and money defending often speculative claims, with the vast majority being resolved through commercial (go away money) settlements" (Australian Hotels Association and Accommodation Association of Australia 2015, 18).

'Go away money' was examined by a three-person panel as part of a review of the FWA announced on 20 December 2011 and instigated to appraise the operability of the FWA (McCrystal & Orchiston 2013). According to McCrystal and Orchiston, the panel was concerned about the payment of money for unmeritorious claims; however, the panel accepted that there was no simple solution to overcome this concern in a 'no cost' jurisdiction where in most circumstances the parties pay their own costs. Nonetheless, the review of the FWA did recommend changes to more easily enable the Fair Work Commission to make cost orders against employees who made unfair dismissal claims that were without merit. Section 611 (2) of the FWA allows the Commission to award a cost order against an applicant where the Fair Work Commission is satisfied that:

1. The first person made the application, or the first person responded to the application, vexatiously or without reasonable cause; or
2. It should have been reasonably apparent to the first person that the first person's application, or the first person's response to the application, had no reasonable prospect of success.

It is possible that many SMEs are unaware of these provisions of the FWA and there is limited case law to support the application of Section 611 (2). To date there has been no academic research on this matter.

2.4.1.2 Sham Contracting

The *Workplace Relations Legislation Amendment (Independent Contractors) Act 2006* (Cth) came into effect on 1 March 2007 and introduced employer obligations regarding sham contracting. The FWA superseded this legislation; although it retained the obligation inherent in the previous legislation.

The Office of the Fair Work Ombudsman (2015a) describes sham contracting as follows:

“A sham contracting arrangement occurs where an employer attempts to disguise an employment relationship as an independent contracting arrangement. This is usually done for the purposes of avoiding responsibility for employee entitlements”.

Under the sham contracting provisions of Division 6 of the FWA 2009, an employer cannot:

- Misrepresent an employment relationship or a proposed employment arrangement as an independent contracting arrangement;
- Dismiss or threaten to dismiss an employee for the purpose of engaging them as an independent contractor;
- Make a knowingly false Statement to persuade or influence an employee to become an independent contractor.

An employer can defend allegations of sham contracting if they are able to prove they acted in ‘ignorance’ and this ignorance was not reckless (Penning 2009, 16). However, this defence requires evidence of reasonable due diligence such as seeking legal advice (Creighton & Stewart 2010), although seeking such advice may in itself be cost prohibitive for a number of SMEs.

Prosecution of employers accused of sham contracting reflects an upward trend with the FWO and the Australian Building and Construction Commissioner lodging a number of successful actions. These prosecutions have resulted in employers being ordered to pay fines and outstanding wages and benefits, noting that many respondents were SMEs. Table 2-2 provides examples of sham contracting prosecutions under the FWA.

While SMEs are morally and legally obligated to engage employees as ‘employees’ and not seek to avoid responsibilities and costs by virtue of entering into a contract for service, the tests at common law to distinguish between a contractor and an employee are complex. Additionally, the FWA does not explicitly define an “employee”, and Section 11 states “employee and employer have their ordinary meanings”.

Table 2-2: Sham Contracting Prosecutions within the Last Three Years

Case	Industry	Decision
<i>Fair Work Ombudsman v Jooine (Investment) Pty Ltd & anor</i> [2013] FCCA 2144	Cleaning	<ul style="list-style-type: none"> ▪ Company ordered to pay penalties of \$47,520 ▪ Sole director personally liable to pay penalties totalling \$9,504
<i>Fair Work Ombudsman v Global Work and Travel Co. Pty Ltd & ors</i> [2015] FCCA 495	Travel Agent	<ul style="list-style-type: none"> ▪ Total penalties of \$139,590 against Global Work and Travel Co
<i>Fair Work Ombudsman v Quest South Perth Holdings</i> [2015] HCA 45	Hospitality	<ul style="list-style-type: none"> ▪ Penalties not yet publicised
<i>Fair Work Ombudsman v Naomi-Jayne Aldred</i> [2016] FCCA 220	Graphic Design	<ul style="list-style-type: none"> ▪ Back payment of wages ▪ Fined \$17,500

As a result and when challenged, common law is still relied upon to determine whether a worker is an employee or a contractor. For these reasons, it may be that many SMEs consider payment on receipt of invoice (in contrast to payment of a wage) to be the distinguishing feature between a contractor and an employee. However, tests at common law consider level of control between the employer and the worker. Notably in the case of *On Call Interpreters and Translators Agency Pty Ltd v Commissioner of Taxation (No 3)* [2011] FCA 366, Justice Bromberg failed to recognise administrative matters as indicators of a bona fide contractor status and, at 295, stated, “I have already stated my reluctance to utilise the absence of deductions of income tax and the failure to provide leave”.

The distinction between the *contract of service* (employee) and the *contract for service* (independent contractor) is complex and no single definition exists (Stewart 2015). Instead, the status of employee or independent contractor is established at common law and by reference to case law.

2.4.2 Occupational Health and Safety

The *Occupational Safety and Health Act 1984* (WA) (OSHA) permits prosecution of employers who fail to provide a safe working environment. Section 23F of the legislation also provides for labour hire engagement and enables dual prosecution of the principal (or agency employer) and also the ‘host’ employer who engages the worker (Johnstone and Quinlan 2006). Arguably, the additional complexity of dual prosecution has the potential to cause confusion for SMEs, regardless of whether they are the principal or ‘host’ employer. Nonetheless, WorkSafe in WA has been consistent in prosecuting both parties, regardless of size of organisation.

Employers are subject to prosecution for potential hazards observed by health and safety inspectors and WorkSafe in WA has been active in prosecuting breaches in this respect. Analysis of prosecutions over the 2009/10 and 2010/11 financial years indicates that over 80 per cent of prosecutions involved SMEs (Department of Commerce 2011a). In most cases the fines were substantial; for example, in August 2011 Dalmain Enterprises Pty Ltd was fined \$90,000 for permanent injury to an apprentice; in February 2011 Ria Contracting Pty Ltd was fined \$45,000 for an employee’s fall resulting in an injured vertebra. Further in December 2010 Wytona Pty Ltd (Sun City Bakeries) was fined \$60,000 for allowing drivers to work more than 17 hours in every 24 hour period between September 2007 and February 2008 (Department of Commerce 2011b).

In their research into health and safety compliance in SMEs, Fairman and Yapp (2005) considered both self-regulation and prescription in the context of meeting legislative obligations. Fairman and Yapp’s research identified SME characteristics in that they (a) considered themselves compliant with their health and safety obligations unless told otherwise; and (b) once told otherwise, identified themselves as compliant if they implemented the recommendations of an inspector in a mechanistic matter. In other words, ‘they ticked the boxes’ but did not embrace the reason for the recommendations, or implement a sustained and proactive commitment to health and safety in the workplace. While Fairman and Yapp’s research sought to establish the relationship between the cost of

achieving compliance and the pecuniary costs of non-compliance, factors such as SME awareness of obligations and supporting resources were not examined.

From a pecuniary and liability perspective, Gunningham (2007) provides commentary on the impact of health and safety prosecutions for employers. From Gunningham's perspective there is potential for large corporates to leverage complex organisational structures to create a bridge between executives and their personal responsibility for health and safety breaches. SME owner/managers, however, are not able to rely on such organisational distance given that, "substantial penalties against individuals have all involved very small enterprises — the only ones where the 'corporate veil' can credibly be broken down" (Gunningham 2007, 384).

2.4.3 Discrimination

Section 351 of the FWA prevents discrimination "because of the person's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin". In this regard, the onus of proof rests with the employer to 'prove' that they have not taken 'adverse action' against an employee on the basis of a discriminatory attribute as defined in Section 351. Further, Section 342 of the FWA defines 'adverse action' as an action by an employer which is detrimental to an employee. While the most common adverse action is termination of employment, other examples include failure to promote an employee or limit their access to development opportunities and equal remuneration.

Each State and Territory in Australia has anti-discrimination legislation and this is presented in their respective Acts covering a number of protected attributes, such as age, race and gender. By way of example, the *Equal Opportunity Act 1984* (WA) prevents discrimination on the grounds of age, family/carer responsibilities, gender/sexual orientation, impairment, marital status, pregnancy/breastfeeding, political conviction, race and religion.

WA employers have obligations under the FWA and the *Equal Opportunity Act 1984* (WA); however, they must also remain compliant with Federal anti-discrimination obligations. Unlike State and Territory anti-discrimination legislation, Federal legislation has an Act for each discriminatory ground (*Age Discrimination Act 2004* (Cth); *Disability Discrimination Act 1992* (Cth); *Racial Discrimination Act 1975* (Cth) and *Sex Discrimination Act 1984* (Cth)). In terms of the order of obligation and precedence, employers must not breach the FWA or the Federal or State anti-discrimination legislation. Therefore, complexities that need to be navigated include:

1. Is the alleged discriminatory action contained in the legislation?
2. Is the discriminatory 'ground' specified as protected by the legislation?
3. If making a claim under the terms of the FWA, the onus of proof rests with the employer.
4. If making a claim under the anti-discrimination legislation, the onus of proof rests with the employee.
5. The employee can take action in the Federal or State system.
6. In making this determination, the employee would consider:

- i. Where there is an inconsistency between the Federal and State legislation, the Federal legislation would prevail to the extent of the inconsistency.
- ii. If the employee takes action in the State system and is unsuccessful, they cannot then pursue a Federal claim.
- iii. If the employee takes action in the Federal system and is unsuccessful, they may still be able to pursue a State claim.

Whether a breach of the anti-discriminatory provisions of the FWA was intentional, or the result of ignorance is of no consequence and the FWO has the power to investigate alleged discrimination claims. As discussed above, the General Protections of the FWA (Part 3 – 1) provide a reverse onus of proof on the part of employers, which is in direct contrast with Federal and State anti-discrimination legislation, where the burden of proof rests with the appellant. Rice and Roles (2010) considered that the General Protections of the FWA could be an alternative to the complexity of Federal and State anti-discrimination legislation in some circumstances; although, cautioned that it may be overly simplistic (Rice & Roles 2010).

The FWO is active in educating employees on their rights under the General Protections of the FWA, and this education is believed to have contributed to increases in the number of General Protection claims in the Fair Work Commission. Applications for General Protections disputes involving dismissal steadily increased in the 2014/15 financial year, with a 17.5 per cent increase in lodgements year on year, and an 18.5 per cent increase between the 2012/13 and 2013/14 financial years. Lodgements in 2015/2016 decreased slightly with a reduction from 3,328 applications to 3,270, year on year. General Protection claims not involving dismissal increased by 40 per cent between the 2012/13 and 2013/14 financial years and have remained around 850 claims per year since that initial jump (Fair Work Commission 2016a).

While the adverse action provisions within the General Protections of the FWA bring additional obligations to employers and offer further protections for employees, the anti-discrimination responsibilities of SME owner/managers are not new. In handing down a determination in *Gilroy v Angelov* [2000] FCA 1775, Justice Wilcox at 100 said, “It may be more difficult for a small employer, with few employees, to put into place a satisfactory sexual harassment regime than for a large employer with skilled human resources personnel and formal training procedures. But the Act does not distinguish between large and small employers, and the decided cases show that many sexual harassment claims concern small businesses, often with only a handful of employees. A damages award against such an employer may have devastating financial consequences; so there is every reason for such an employer to be careful to prevent claims arising”. This judgement refers to a case in which a female employee was sexually harassed by a male employee in a small cleaning business. The female employee informed the business owner of what had occurred; however, no action was taken by the employer to deal with the allegation.

Despite the complexity of anti-discrimination legislation in Australia and the reverse onus of proof introduced by the FWA, there is a paucity of Australian research into SME compliance with discrimination legislation.

2.5 Australian Research

This Section explores Australian research into employment-related legislative compliance. The primary source for this literature review was the Curtin University Library catalogue which searches multiple databases over and above the library's online and physical resources. Rather than search specific databases, the advanced search capability of the catalogue was accessed using key words. Although an initial set of key words was determined, these were amended and expanded to broaden the search results. Terminology is not always consistent and agility was required when executing searches. By way of example, some literature refers to small 'firms' and not small 'businesses'. Also, 'industrial' relations can be referred to as 'labour or labor' relations and 'legislation' included under the broader title of 'regulation'. The databases typically accessed through the online catalogue search were:

- EBSCOhost Business Source Complete
- EBSCOhost Entrepreneurial Studies Source
- Emerald Management Plus
- Free E- Journals
- HeinOnline Law Journal Library
- JSTOR Arts and Sciences X
- Proquest Central
- Springer Standard Collection
- Wiley Online Library

Generally the search criteria used the key words 'small business'; 'small firm'; 'employee'; 'legislation'; 'industrial relations' and 'labour/labor relations'. The words 'comply' or 'compliance' were used; however; not consistently. When either of these words was used in the search criteria, the literature results decreased significantly. The words were found to be too specific and restricted access to literature that was found to be relevant to the research.

Additional search strategies were required when researching Australian literature. The 'cited by' capability provided by the Curtin University Library catalogue was used to explore further research and this provided some success. Additionally Google searches were used to identify potential literature and this search was refined by using punctuation and symbols. The search results were then verified against the Curtin University Library catalogue.

The literature results were refined by peer-reviewed articles since 2000. Where more than one publication had generally consistent findings, research methodology and scope, the most recent publication has been discussed. The review of Australia research in relation to SME compliance with employment-related legislative compliance is now presented.

2.5.1 Characteristics of SME Owner/Managers

A theme of owner/manager *autonomy* was found by Campin, Barraket and Luke (2013) in a study of micro-business owner/managers in Queensland. The researchers analysed data from 36 semi-structured interviews that examined the motivations and barriers for

business community responsibility. The research found many owner/managers support their local community and an informal relationship 'works'. Campin, Barraket and Luke found that owner/managers are uninfluenced by policy and sophisticated systems, and regulation or structure may be ineffective in influencing business community responsibility. Owner/managers were reported to be the sole decision makers and characterised as people of action who will choose their community involvement as they see fit.

In a study into employment relations in small businesses, Bultjens (2003) undertook research into the operation of registered clubs in New South Wales. Bultjens found that SME owner/managers exercised informality and autonomy when making employment related decisions; although, noted that this level of managerial prerogative can be inconsistent with external regulation and the requirement to comply with employment legislation.

When advocating the benefits of employing people with disabilities in the small business sector, Hindle, Gibson and David (2010) discussed the characteristics of entrepreneurs when making decisions. While recognising the traits necessary to start a business, the researchers identified SME owner/managers as being challenge orientated, but risk averse. With a potentially biased perspective on the relative ability of a disabled person, the research found SMEs will avoid hiring a person with a disability or impairment.

Regulation and the burden this places on SMEs is regularly referenced in professional literature. Owner/managers may consider anything that does not directly relate to their 'core' business to be unnecessary (Commonwealth Government of Australia 2007). Owner/managers who transition from employment to self-employment often have an idealistic view of autonomy and being their own boss. What they do not always contemplate is that they are now responsible for the regulatory obligations once managed by the people they once worked for.

An SME owner/manager's preoccupation with business survival is perhaps justified. Data from the Australian Bureau of Statistics reported that only 52 per cent of small businesses (between one and 19 employees) registered in June 2011, were still in business in June 2015 (Small Business Development Corporation 2016a). The survival rate for medium-sized businesses (20 to 199 employees), was only 24 per cent over the same period. Nonetheless, compliance with employment-related legislative obligations exists regardless of organisational size; and SME owner/managers must consider all business responsibilities when running their business.

2.5.2 SME Compliance with Industrial Legislation

An Australian study by Zhang (2010, 71) suggested that custom and practice rather than knowledge drive behaviour, stating "many of our women work in small factories and small businesses, where the boss does not follow the law. What the boss says is the law".

A distinctive theme in research into SME non-compliance is lack of knowledge and awareness. Todd and Hutchinson (2011, 5) identified that SMEs found the FWA confusing and managers could be in breach "...because of their lack of understanding" of the

legislation. Commonwealth Government research into small business taxation compliance also found agreement by tax agents that employing workers adds a significant regulatory cost to an SME (Commonwealth Government of Australia 2007).

Research into how simplifying access to information might educate and encourage employers to provide flexible work practices for employees, recognised some challenges for SMEs. Specifically, Smith (2014) discussed ways in which anti-discrimination obligations can be simplified with the purpose of assisting employer interpretation and understanding of the legislation. Smith contends that the existing anti-discrimination regulatory framework does not provide clarity for employers or guidance on what to do, and what not to do. Further, Smith found that this lack of understanding would impact on an employer's willingness and capacity to comply.

Hardy (2011) found that compliance with legislative standards is underpinned by two fundamental conditions: knowledge of the compliance standard, and the capacity to comply. Hardy identified that the FWO, "...has sought to harness or 'enrol' non-State Stakeholders, such as Employer Associations, trade Unions and others, in a bid to improve its regulatory effectiveness" (Hardy 2011, 118).

Research by Cockfield and colleagues (2011) looked at employment regulation and compliance in the context of low paid workers in Victoria. The research involved a survey and interviews with low paid workers and considered matters such as wages and working conditions. The two key findings from this research by Cockfield and colleagues into low paid workers were: (a) lack of employee knowledge of their pay and condition entitlements; and (b) non-compliance by employers in the area of pay and conditions. Cockfield and colleagues found that low paid workers were often employed in SMEs and SMEs were characterised by limited access to human resource professionals and low Union involvement.

Freyens and Oslington (2007) surveyed 1438 SMEs, and found increased exemption from unfair dismissal legislation has minimal financial impact on their business. The research used a combination of dismissal costs by type of dismissal and a labour demand model to reach this finding. Later research by Freyens and Oslington (2013) examined unfair dismissal claims under the FWA and found, "Lodgements have increased markedly under Fair Work compared to Work Choices, though not out of line with changes in coverage and employee success rates are much higher under Fair Work probably because of the exclusion of small business cases by Work Choices which are more likely wins for employees, and because of the new employee-friendly remedies under general provisions of Fair Work" (Freyens and Oslington 2013, 302). In essence, unfair dismissal claims increased under the FWA; however, these researchers considered that the increase was not unexpected given the increased number of employees now eligible to make a claim.

Research by the Australian Mines and Metals Association (2016) reported that their members (Resource Sector employers) pay 'go away money' when confronted with an unfair dismissal claim, even when they consider that the claim is without merit. 'Go away money' was also discussed in an Australian Government Productivity Commission Report (2015) into the Workplace Relations Framework. In response to employer association input to that

Report by the Australian Government Productivity Commission (2015), a two-stage ‘test’ was recommended which would first require the Fair Work Commission to assess if there were a valid reason for dismissal before lodging the matter with the employer.

Lack of knowledge of the FWA is not uncommon across SME owner/managers and a better understanding of the unfair dismissal process may avoid misunderstanding and a sense of having to pay ‘go away money’ (Todd 2011). However, until the Fair Work Commission evaluates unfair dismissal claims before lodging the claim with the employer, SMEs are likely to assume the Commission has evaluated the claim as meritorious.

2.5.3 Health and Safety

Research into SME health and safety compliance by McCallum, Schofield and Reeve (2010) found that smaller businesses were typically reactive, resistant to acknowledging their responsibilities and did not employ occupational health and safety experts. Prosecutions under the *Occupational Safety and Health Act 1984* (WA) support these findings (Department of Commerce 2016b). In 2015 and 2016, the majority of WA prosecutions involved SMEs, and in most cases the fines were substantial when compared to the size of the business and associated annual revenue (Department of Commerce 2016b). WorkSafe WA also reported the results of 225 workplace inspections carried out on restaurants and cafes in the 2013/14 and 2014/15 financial years which resulted in 1364 improvement notices being issued (Attard 2016).

Precarious employment is an employment arrangement that offers less security to a worker and is characterised by temporary and casual engagement, or contracting or agency employment. In many jurisdictions, precarious employment offers a reduced level of employment-related legislative compliance for employers and this is often attractive to an SME. Australian researchers, Zhang and colleagues (2015) recognised a global trend toward flexibility in employment and the growth of the agency worker to avoid or reduce employment obligations.

China arguably represents the largest agency employment market in the world, and Zhang and colleagues (2015) found the potential for a decline in employment-related legislative compliance if the employee was engaged through a third party agency. While agency employment is said to mark a decline in employment conditions and health and safety standards in China, Zhang and colleagues found that Australian legislation provides fewer leniencies for employers. While SME owner/managers in Australia may seek to rely on the agency employer to meet the requirements of the FWA, dual health and safety obligations exist for both the agency employer and the ‘host’ employer.

Barrett and colleagues (2014) undertook an analysis of anticipated responses by small business to health and safety harmonisation legislation. With the exception of WA and Victoria, the ‘harmonised’ work health and safety legislation has been implemented in all jurisdictions in Australia (Safe Work Australia 2016). Barrett and colleagues contend that the additional rigor of the ‘harmonised’ health and safety legislation may not sit well with small business. Referring to prior literature, Barrett and colleagues anticipate that a lack of

understanding of the new legislation could evoke avoidance and non-compliance by small business owners.

2.5.4 Discrimination

A study into workplace experiences of Muslim women in New South Wales found an appearance of compliance in a large business environment in the form of policies; however, interviews with employees identified an informal culture of direct and indirect discrimination (Syed & Pio 2010). A search of Australian literature to date did not uncover research that sought to establish how small and medium businesses compared with their larger counterparts in the formal and informal compliance with anti-discrimination legislation. While Carney (2009) found that discrimination was systemic with employees returning from parental leave and seeking to work part-time, this research did not seek to determine business size as a contributing factor.

Research by Hahn and Wilkins (2013) into self-reported job discrimination perhaps supports findings that the SME employer/employee relationship influences perceptions between the parties (Hasle et al. 2012). Hahn and Wilkins found that employees in a small business (said to be fewer than 20 employees) were less likely to perceive that they had been discriminated against in the workplace.

A study into the effectiveness of anti-discrimination compliance strategies in Australia examined the potential to use 'guidance' materials to assist employers to comply with the legislation (Smith 2014). However, Smith recognised that even the most pervasive and condensed support materials would not change the actions of employers who are not motivated to change.

2.5.5 Australian Research Summary

Research by Verreynne, Parker and Wilson (2013) into the relationship between investment in people management systems and business performance found a correlation between a positive work environment and high performance. Lower performing organisations were characterised by behaviours such as fear of loss of employment, reluctance to complain without fear of reprisal, and pay/promotional inequity. While there is a cost associated with employment law compliance and investment in people, the findings of the study by Verreynne, Parker and Wilson identified that employers could be negatively impacted if they did not invest in people. Outcomes such as employee disengagement and low productivity were associated with SMEs who failed to invest in employment systems such as pay and rewards and procedural consistency.

In a study of 391 small business owners in New South Wales and Victoria, Lewis and colleagues (2015) found that SME owner/managers' perceive employment-related legislation provides employees with greater protections and rights than were afforded to the employer (Lewis et al. 2015). Lewis and colleagues also found that industrial relations legislative compliance was referred to most frequently when considering cost to comply. The researchers also identified that the volume of compliance support material was significant but the quality was poor, leading to more time and cost investment.

The Australian Government is cognisant of compliance challenges of the employment-related legislative environment and is a major contributor to research in this area. The workability of employment-related legislation in Australia was examined in a recent report into the Workplace Relations Framework (Australian Government Productivity Commission 2015). That Report provided a number of recommendations in support of small businesses for consideration by the Australian Government and these included: provisions of enterprise contracts as a simpler form of enterprise agreement; removal of the Small Business Fair Dismissal Code (on the basis that the current provisions lead to a false sense of security on the part of the SME owner/manager); and, development of an information package on individual flexibility arrangements by the FWO to assist SME owner/managers in their understanding and use of these provisions of the FWA. The Report also examined compliance costs, with an evaluation that red tape costs, “are marginal compared with concerns about other costs of employment — particularly wage and penalty rates and the burden imposed by unfair dismissals” (Australian Government Productivity Commission 2015, 967). Nonetheless, the Report did acknowledge that SMEs: (a) endure a disproportionate compliance overhead, (b) are impeded by legislation which is “unfriendly” to SMEs, (c) bear the burden of constant change, and, (d) are unaware as to where to find compliance resources and support (Australian Government Productivity Commission 2015).

The Fair Work Commission also commissioned research into the usability of modern awards by small businesses (Sweeney Research 2014). This research involved interviews with 47 small business owners in New South Wales and Victoria, and feedback from participants with regard to a future exemplar modern award template was generally favourable. Section 156 of the FWA requires the Fair Work Commission to review modern awards every four years and the exemplar award is part of the Commission’s ‘plain language’ re-drafting direction (*4 Yearly Review of Modern Awards – Plain Language* [2016] Fair Work Commission FB 5621).

2.6 International Research

This Section explores international research into employment-related legislative compliance. As discussed in Section 2.5 of this Chapter, the primary source for this literature search was the Curtin University Library catalogue. The search criteria did not change from the criteria detailed in Section 2.5; however, the publications were limited to those covering international jurisdictions.

2.6.1 Characteristics of SME Owner/Managers

An Irish study undertaken by Kelliher and Reinl (2009, 525) referred to “resource poverty” in discussing the constraints experienced by small businesses in the operation of their business. Specifically the researchers refer to time, financial and expertise limitations. Expanding research into resource poverty in the context of strategic decision making in small businesses, research undertaken by Kroon, Voorde and Timmers (2013) discussed SME owner/manager agility and how flexibility can achieve innovative human resource practices. Their study also referred to the closeness of interpersonal relationships in small businesses and how these environments of direct control by the owner/manager can

reduce the need for formal internal control mechanisms (Davila 2005, and De Grip & Sieben 2009; cited in Kroon, Voorde & Timmers 2013). Certainly a lack of bureaucracy in SMEs is acknowledged by these researchers as an efficient and dexterous approach to running a business; however, this level of direct control cannot occur in isolation and without consideration of external obligations. Therefore, SME owner/managers must recognise that innovative human resource practices need to remain consistent with their employment-related legislative obligations.

A United States quantitative study by Tocher and Rutherford (2009) sought to understand if there was a correlation between SME owner/managers' attributes and their response to human resource management problems. The four attributes investigated were owner/manager: (1) gender; (2) age; (3) experience in business; and (4) educational background. Computer-assisted interviews were used to survey 1,693 SME owner/managers and the findings were:

1. The hypothesis that male SME owner/managers were more likely to perceive human resource management problems as acute was not supported by the research.
2. More experienced and highly educated SME owner/managers were more likely to consider a human resource challenge to be an acute challenge. The researchers contemplated that experienced SME owner/managers would be more aware of the criticality of a human resource issue and the necessity to take action. Additionally, the researchers theorised that educated SME owner/managers would have a greater awareness and attention to human resource problems.
3. Finally, the age of the SME owner/manager was not a determinant of whether or not they would or would not perceive a human resource management issue to be acute.

Considering the concept of control in a small business environment, a New Zealand study by Coffey, Tate and Toland (2013) examined the propensity and motivation of small businesses to comply with green information technology initiatives. The researchers found that SME owner/managers experienced challenges meeting these environmental initiatives and identified three shared objections to compliance with the initiatives. These included:

1. Distrust of Government regulation (when compared to independent industry-led initiatives);
2. Lack of financial incentives to change; and
3. Low awareness or interest in matters that did not directly correlate to business performance.

The lack of SME inclination to comply within a regulatory framework was considered by North (2016) in research into SMEs' contribution to low carbon emissions. North reflected on a number of factors that would either motivate or discourage SMEs to embrace a low carbon direction. North recognised that owner/managers are cost driven, focused on 'core' business, dislike regulation, are often unaware of compliance requirements, and may be financially unable to undertake the changes necessary to achieve low carbon emission initiatives. However, the researcher also noted that, unlike large businesses, SMEs often serve a local market and become part of a community. While generally a local relationship can achieve loyalty and support for an SME, negative publicity may have an adverse

outcome. Owner/managers, who are found to be non-compliant with legislation considered to be important to their customers, can risk reputational damage that may impede business survival. North discussed the latter as a motivator to encourage SME compliance with low carbon emissions and observed, "...the SME owner's personal reputation matters, as does how she treats her employees, who may be family, friends or neighbours" (North 2016, 12).

In considering SMEs in the context of business risk and sustainability in Nigeria, Yusuf and Dansu (2013) characterised SME owner/managers as being the sole decision makers in their business from both a strategic and operational perspective. However, these researchers contended that SME owner/managers were possibly lacking the managerial skills to effectively manage a business. Further, Yusuf and Dansu suggested that lack of managerial ability can impede the employer/employee relationship and may result in organisational instability and employee turnover. These findings are supported by an earlier Canadian study by Wagar and Rondeau (2006) into voluntary and involuntary turnover in the context of effective human resource practices in SMEs. Owner/managers require skills that go further than those related to the core aspects of their business and this is not always the case. These skills extend to the ability to manage and comply with regulatory aspects of running an SME and some owner/managers have more inherent capability than others in this regard.

A desire for flexibility in the application of regulations, reduced complexity, a single point of support and greater consultation, were the findings from semi-structured interviews with United Kingdom SME retailers (Schmidt et al. 2007). Avoidance and non-compliance were found to stem from a lack of understanding of the regulations and an inability to keep up-to-date. Access to information was also found to contribute to non-compliance in that the avenues used to disseminate support and resources did not always correlate with how SMEs wanted to access this information.

Finally, a survey of over 2,000 small businesses in the United Kingdom in 2012 found that SME owner/managers avoid or flout regulations and defer to their version of a common sense approach to complying with legislation (Anderson & Ullah 2014).

2.6.2 SME Compliance with Industrial Legislation

Research into SME owner/manager compliance with employment-related legislation found that investment in compliance was questionable and ranked lower in terms of attention to matters such as taxation, finance and operational matters (Dale, Shepherd & Woods, 2008). The researchers noted that, "the dark side of SMEs is often related to employment relations practices, in which compliance with employment law is seldom a high priority for SMEs" (Lamm 2002; cited in Dale, Shepherd & Woods, 2008, 57).

Research by Zhou (2013) into precarious work in China found that more rigorous employment legislation in the form of the 2008 Labor Contract Law further influenced a trend away from permanent employment and toward the use of contractor and agency employees in the SME sector. Owner/managers used non-permanent employment as a 'workaround' to avoid the employee benefits and protections provided by the Law. While China may be viewed as a late entrant to the pluralist system of industrial relations, Chung

(2015) found that the Labor Contract Law sought to fetter employer abuse of employees as the economy grew. Chung's research drew data from 60 SME electronics factories and found that compliance with the Law was not consistent but owner/managers could be motivated to comply if sufficient local pressure existed. Chung referred to the power of the employees' voice as an influencer to compliance and also the positive contribution that could be achieved through collaborative efforts by 'new' Stakeholders such as local labour lawyers, media, local arbitrators and HR/labour consultants.

A New Zealand study by Lamm (2014) highlighted the propensity for SME owner/managers to employ family, friends or casual/temporary employees in an attempt to reduce the perceived financial costs of meeting their employment-related legislative obligations. Research into employment law compliance in family businesses in the United Kingdom (Ullah & Smith 2015) also sought to understand why owner/managers resisted employing staff outside of the family. The researchers accessed data from the Federation of Small Businesses survey conducted in 2009 and this comprised 2,524 observations with small businesses. Some of the 170 questions related to Government regulation and the employment of additional employees. Verbatim responses were collected in the survey and Ullah and Smith qualitatively analysed 624 participant responses. From the data, these researchers identified six perceived emergent themes as deterrents to business growth through the employment of 'outsiders'. These included:

1. Complexity and paperwork.
2. Cost and time to comply with employment legislation and also the requirement to pay additional taxation and provide paid leave.
3. Legislation that was biased toward the employee and provided limited protection for SMEs.
4. Payment of employees when they are on maternity or paternity leave, limiting the employment of younger women was provided as a covert 'workaround'.
5. The impact on the bottom line and business survival as a result of providing employees with the terms and conditions required by the legislation.
6. Making incorrect assumptions and lack of understanding by Government legislators.

(Ullah & Smith 2015)

Ullah and Smith concluded that small businesses are reluctant to become employing businesses and this lack of inclination to employ was considered a potential inhibitor of economic growth. SME owner/managers perceive inequity in their ability to meet legislative compliance when compared with large businesses, and consider themselves to be the victim of regulatory forces. In some cases this perception is the result of incorrect assumptions on the part of owner/managers who have not sought to become informed. Regardless, Ullah and Smith found that there is an opportunity for proactive dialogue between small businesses, Employer Associations and the Government to reconcile perceived and real challenges for small businesses in meeting employment-related legislative obligations. There are significant synergies between the United Kingdom and

Australian employment law landscape and it would be reasonable to consider Ullah and Smith's findings in the Australian context which this research addresses.

The relative complexity of employment-related legislation was the subject of United Kingdom research into small businesses and the factors considered to inhibit growth. Anderson and Ullah (2014) interviewed small businesses and asked questions specific to United Kingdom employment regulations. The researchers referred to "forceful, passionate responses" by participants and included commentary such as, "nothing would induce me to employ anyone" and "I do not want staff!". Anderson and Ullah's research participants talked about divesting themselves of employees and doing the work themselves. The researchers found that participant decisions to become 'non-employing' SMEs were based on factors such as increased profit and the perceived burden of employment-related legislation. Further research from the United Kingdom also found that SMEs do not have in-house expertise and find it costly to comply with employment-related obligations (Ullah & Smith 2015). Participants to Ullah and Smith's research talked about inhibitors to employing staff outside of their immediate family and these inhibitors were described as: complexity and paperwork, employment costs, employee rights, parental entitlements, recession, dismissal and lack of empathy on behalf of Government legislators.

Research undertaken by Parker and colleagues (2012; 2014) refers to studies of SME owner/managers that found personnel-related issues take a back seat as a priority in their businesses. In the absence of administrative and specialist HR assistance, owner/managers use their own expertise and available resources to focus on accounting, production, finance and marketing tasks. That is, employee-related matters were considered a lower priority for the SME owner/manager.

In the United States, Massey and Campbell (2013) surveyed 80 owner/managers regarding their knowledge of the *Fair Labor Standards Act 1938*. The survey asked a series of 'yes' or 'no' questions across a range of employment-related legislative matters and the results indicated a significant lack of knowledge by respondents across a number of fundamental employment obligations. Error rates of between 15 per cent and 96 per cent existed when owner/managers answered compliance questions in relation to the *Family and Medical Leave Act 1993*, the *Fair Labor Standards Act 1938*, and overtime entitlements.

Cost and time of paperwork, finding information and understanding obligations are regularly discussed in the context of employment-related legislative compliance. Warfield and Stark-Jones (2012, 23) cited a 2010 study by the United States Small Business Administration Office of Advocacy which estimated that, "...small businesses with fewer than 20 employees pay approximately 36 per cent (or approximately \$3,800) more per employee for regulations than do large firms with 500 or more employees". The result of this study is perhaps not surprising in that the microeconomic theory of economies of scale is that the cost per item reduces as volume increases (Mosca 2008). To put this into context, an organisation with 500 employees can employ a professional human resource/industrial relations manager at a cost of \$100,000 per annum. While the unit cost to the organisation with 500 employees would be \$200 per head, the same cost to an organisation with 20 employees would be \$5,000 per head.

An earlier United States study by Weil (2008) examined the findings of a report by the International Labour Organisation (2006) which referred to the challenges of regulatory bodies such as the Fair Work Commission and FWO in being able to effectively monitor and investigate employer breaches of employment legislation. Weil discussed factors such as the ratio of workplace inspectors to the number of businesses within their designated jurisdiction. By way of example, the 2006 International Labour Organisation report noted, “the ratios between active population and workplace Inspectors range from one Inspector per 5,500 active workers in Malaysia, 8,300 workers in Latvia, to one to 45,000 in Burkina Faso, to one to 370,000 in Cambodia and one to 3,200,000 in Bangladesh” (International Labour Organisation 2006). In considering the findings of the International Labour Organisation report, Weil provided criteria that can be used to maximise the arguably limited number of workplace inspectors available to monitor compliance with employment-related legislative obligations in the workplace. These criteria included:

1. Prioritisation of inspections based on factors such as low paid occupations and mapping resources to major problem areas such as industries where non-compliance has been historically prevalent.
2. Deterrence of non-compliance by way of working closely with third parties such as trade Unions and Employer Associations. Weil referred to the ‘probability’ of an inspection and the perceived impact in terms of pecuniary penalties as motivators to incline owner/managers to comply with employment-related legislation.
3. Sustainability of owner/manager compliance behaviours once an inspection has occurred. Weil found that the practice of targeted campaigns whereby a workplace inspectorate focuses on one industry or location for a period of time before moving onto another industry and another location, can lead to short-term and reactive compliance only.
4. Integrated approaches such as infiltration of the supply chain and incentives for employers to partner with third parties who will comply with their employment law obligations; and,
5. Decentralised planning in consideration of local conditions. Weil found that there was a need for Governments to become more agile in the optimum assignment of workplace Inspectors and concluded that without the threat of regulatory intervention, employers are not motivated to comply.

(Weil 2008)

Using a case study approach, Debrah and Mmieh (2009) recognised the importance of inspections and audits in driving employment-related compliance behaviour. The researchers identified a decline in workplace inspectors in Ghana and associated a lack of compliance resources with an increase in employer autonomy and self-governance.

How SME owner/managers navigate their employment-related legislative obligations is not ‘a one size fits all’ strategy and is dependent on a number of factors. Harris (2002) found elements such as size of the business, trade union presence, internal human resource knowledge, organisational culture and the value and beliefs of the owner/manager as influencers of compliance. However, the research also found that SME owner/managers will avoid growing the size of their workforce in order to avoid any extension of their employment-related legislative obligations.

2.6.3 Health and Safety

In the United Kingdom research by Baldock and colleagues (2006) considered the influencers and motivators that underpin health and safety compliance initiatives in SMEs. The study involved telephone interviews with approximately 1,000 businesses that employed fewer than 50 staff members. The SME owner/managers were asked to describe what motivated them to implement health and safety strategies toward meeting their compliance obligations. The research found:

1. 53 per cent of participants indicated that the health and safety initiatives were self-motivated and implemented to protect their workforce;
2. 30 per cent of participants indicated that their initiatives were motivated by legislative obligations; and,
3. 13 per cent of participants cited that the health and safety initiatives were implemented in response to orders or recommendations from health and safety inspectors.

Baldock and colleagues concluded that the existence of health and safety inspectors was a primary motivator noting, "...even where participants suggested that actions were 'self-motivated', nearly four fifths (seventy-nine per cent) of these businesses had also received a visit from a Health and Safety Inspector" (Baldock et al. 2006, 836).

Research by Vickers and colleagues (2005) sought to understand the impact of health and safety regulations on small businesses in the United Kingdom. Using data drawn from a telephone survey of 1,087 owner/managers, face-to-face interviews with 73 owner/managers, and interviews with 12 health and safety inspectors and 21 SME employees, their research identified that SME health and safety compliance was generally reactive and efforts to comply ranged from overt avoidance to the proactive implementation of processes. The researchers reflected on the British Government's focus on reducing 'red tape' for small businesses and considered the balance between an effective regulatory framework that protected workers and one that was outcomes focused rather than an administrative burden.

Hasle and colleagues (2012) found that interpersonal relationships between the employee and the employer are more pronounced in a small business and that the lines between work and friendship can be blurred. The researchers also propose that SME owner/managers access this close working relationship to diffuse and share their health and safety obligations in order to avoid compliance, guilt and blame. An earlier Danish study by Hasle and Limborg reported that SMEs are at greater risk of workplace incidents and accidents. SMEs are unlikely to apply adequate health and safety preventative controls because they lack access to internal and external expertise. The close employer/employee interpersonal relationship in an SME also results in a health and safety culture that is dependent on the discretion, beliefs and values of each owner/manager. SMEs are survival and 'core' business focused and generally unable to afford to implement adequate health and safety controls.

Swedish research by Seing and colleagues (2015) examined employees' experience when returning to work after illness or injury. The study also looked at employers' perceptions of factors that either supported or detracted from their support for an employee's early return to work. In considering the role of the SME owner/manager in facilitating an employee's return to work, Seing and colleagues found that small business employers considered health matters to be an employee's responsibility and not matters for their concern.

The last two decades have signalled a move away from permanent employment and toward precarious employment. A New Zealand study by Laird and colleagues (2011) examined prior literature on SME owner/manager characteristics to identify opportunities for collaborative initiatives that can reduce and prevent workplace incidents and accidents with hazardous substances. The researchers found that small business owners seek to avoid the cost of health and safety obligations and their avoidance strategies included the engagement of non-permanent employees or contractors to minimise their legislative exposure.

2.6.4 Discrimination

South African research into SME compliance with anti-discrimination obligations (Kyobe 2009) referenced a United Kingdom survey by Unum (2004) which found that 75 per cent of small businesses had no knowledge of changes to the *Disability Discrimination Act 1995*. Pratten and Lovatt (2005) conducted structured interviews with owner/managers of public houses in the United Kingdom with a view to establishing their level of understanding and compliance with this anti-discrimination legislation. The researchers found overt positive and negative discrimination in a number of cases, along with incidents of the legislation being flouted if the owner/manager considered the legislation to interfere with the running of their business. Additionally, the researchers commented on participants who were sole traders and without the protection of a company operating structure. That is, if an action for breach of the anti-discrimination legislation were lodged and found to be successful, the damages award could render the owner/manager bankrupt.

According to Hoque and Bacon (2014), non-compliance with European Union equality legislation is not limited to SMEs. Hoque and Bacon refer to United Kingdom employers balancing business efficiency and survival with meeting their compliance obligations. A study by Hoque, Bacon and Parr (2014) engaged 159 'disability champions' and sought to understand compliance with the 'two ticks' symbol (referring to a 1990s United Kingdom initiative whereby employers promoted themselves as being active in meeting five positive anti-disability discrimination criteria). The results of the research indicated that compliance is limited and commitment to the five criteria often lacking. The researchers found that there is little monitoring from a regulatory perspective and employers are left to use their own discretion in choosing to display the 'two ticks' symbol on job advertisements and other publications.

2.6.5 International Research Summary

International research discussed in this Chapter considered the characteristics of SME owner/managers and how these characteristics are reflected in the management of their business. Additionally, research considered factors that either motivated or discouraged SME owner/managers to comply with their legislative obligations. Generally, the research provided the following observations across a number of research studies:

1. Absence of managerial capability;
2. Owner/managers with an inherent capitalist belief and value system;
3. Lack of administrative support in the business;
4. Owner/managers who consider that employees need to take ownership for their own health and safety;
5. Owner/manager prioritisation that marketing, finance, production and accounting take precedence over personnel matters, and
6. Evidence of owner/managers' implementing employment practices that mitigate or lessen their employment-related legislative obligations.

Notwithstanding the above, Curran and Blackburn (2001) propose that SME owner/managers are not homogenous and are as diverse as the general population. In doing so, Curran and Blackburn comment that a focus on SME owner/manager characteristics is perhaps unnecessary and pointless. Specifically, Curran and Blackburn conclude:

“Small enterprises have an extreme range of forms. They operate in every sector of the economy, from computer software to candle-making and from insurance broking to instrument manufacturing. Entrepreneurs and owner-managers come from different genders and/or a wide range of ethnic, cultural and educational backgrounds and from every age group. While some start their own businesses from scratch, others inherit or buy an on-going business. Some are sole owners while others run their businesses with partners or other directors. Some are family businesses with owners, partners or fellow directors and even employees linked by blood or marriage. Others are run by people who have come together solely because they share common goals, complementary skills or access to capital” (Curran & Blackburn 2001, 5)

Each owner/manager has different capabilities that will either help or hinder the ease with which they meet their legislative obligations. However, there are also many factors that are common amongst owner/managers and have been found to contribute to compliance behaviour. Owner/managers strive to survive and their time is finite (Australian Government Productivity Commission 2013; Warfield & Stark-Jones 2012). Research has also found that attributes of control and autonomy exist in individuals who elect to be a business owner in preference to being an employee and these traits contribute to compliance action or inaction (Anderson & Ullah 2014; Debrah & Mmieh 2009; Hasle et al. 2012).

2.7 Summary and Critical Evaluation of Existing Literature

Although extensive Australian research has been undertaken into SME compliance in relation to taxation obligations (Jorgensen 2010; McKerchar, Hodgson & Walpole 2009; Rametse & Yong 2009), much of the commentary on SME compliance with employment-related legislative obligations has been published by Government, Unions or Employer Associations. There is, however, a scarcity of academic inquiry into SME compliance behaviours with employment-related legislation. The few studies that have been undertaken (Todd 2011; Todd & Hutchinson 2011) found that complexity and lack of understanding resulted in non-compliance with the legislation, and SMEs do not typically have the resources or systems to manage complex obligations.

Smith (2014) proposed that educating employers may improve compliance with anti-discrimination obligations; however, recognised that inclination to comply would underpin the success or otherwise of improved Government resources (Campin, Barraket & Luke 2013; Buultjens 2003). McCallum, Schofield & Reeve (2010) found that smaller businesses were resistant to health and safety compliance and Zhang and colleagues (2015) found that employers sought to reduce or avoid their obligations by altering the nature of the employment relationship.

International research across a range of jurisdictions, using different data sources and different methods of analysis, suggests that SME owner/managers are resistant to regulation. Challenges in the compliance with employment-related regulation are characterised by complexity of the legislation along with the degree of change in compliance requirement. Compliance costs are also a concern for SMEs and these costs are a combination of time and financial expenditure (Ullah & Smith 2015; Warfield & Stark-Jones 2012). The SME owner/managers considered in international research are concerned with business survival and set their priorities on 'core' business activities. That is, they need to spend time making money and seek to avoid costs that further reduce a marginal business position (Anderson & Ullah 2014; Bischoff & Wood 2013; Harris 2002). When SMEs do attend to their regulatory obligations, employment-related legislative compliance is a lesser priority when compared to accounting, production, finance and marketing tasks (Parker et al. 2012; 2014). An owner/manager's desire for autonomy was found in much of the research and this desire for control may be a reaction to perceived compliance costs. At the same time, a preference for self-regulation may be grounded in the distinctive independence traits of an entrepreneur (Anderson & Ullah 2014; Debrah & Mmieh 2009; Hasle et al, 2012).

While limited, the Australian and international research discussed in this Chapter considers SME owner/managers' compliance in the context of: knowledge to comply, resources to comply, effort to comply and the influence of pecuniary penalties. The characteristics and behaviours of SME owner/managers also attracted research and commentary in the context of autonomy, priorities and inclination to comply with employment-related legislation. The objective of this thesis is to extend existing research through the gathering of data from SME owner/managers in order to have greater understanding of their

perspectives. Further, the perceptions of SME owner/managers are compared with those put forward by Stakeholders.

Todd and Hutchinson (2011) found that SMEs experienced complexity when navigating the FWA, in particular the transitional arrangements. That study represented early research into the workability of the FWA and did not extend the enquiry into SMEs' use or experience with available 'cost' and 'no cost' resources. Research into health and safety obligations found that SMEs took a 'common sense' and 'tick box' approach to the legislation. These studies had findings that extended to: SME characteristics; business priorities; autonomy; and, survival (Vickers and colleagues 2005; Fairman and Yapp 2005; Baldock and colleagues 2006; Gunningham 2007; Barrett and colleagues; Schofield and colleagues 2014). In each case the research was concerned with detailed aspects of health and safety compliance, rather than employment law compliance as a broader obligation.

The characteristics and behaviours of SMEs have been studied in the context of how the SME employer demographic respond to and interact with matters such as community responsibility (Campin and colleagues 2013), green initiatives (Coffey, Tate and Toland 2013), and carbon emissions (North 2016). These studies identified SME traits such as autonomy, focus on survival, and distrust in Government resources when responding to business compliance. While the findings of the studies provided guidance on general SME compliance behaviours, research specific to employment-related legislative compliance can further this existing body of literature on the SME owner/manager persona.

Research specific to employment-related legislative compliance is limited, but nonetheless has provided some insight into SME experiences and behaviours. Quantitative research by Buultjens (2003), Massey and Campbell (2013), and Ullah and Smith (2015), examine SME compliance experiences. The research findings from these studies identify factors such as SME autonomy, complexity of the legislation, time constraints, and limited knowledge of legislation, as contributors to the effectiveness of SME compliance efforts. The skills, relative ability, and inclination of SMEs to comply with employment-related legislative obligations has also been discussed in international qualitative studies (Harris 2002; Schmidt and colleagues 2007; Anderson and Ullah 2014). In a study that examined regulatory compliance across a broad range of compliance obligations, Lewis and colleagues (2015) analysed survey data from 391 SMEs in New South Wales and Victoria. The findings of that study contributed in part to knowledge of SME experiences when navigating employment-related legislative compliance, this research seeks to extend these findings through further and more focused inductive enquiry.

There is, therefore, a need for further research that centres on SME owner/managers' experiences when navigating employment-related legislative obligations. To date, no such qualitative enquiry has been undertaken in Australia that extends to: the experiences and behaviours of SMEs when meeting their employment-related legislative obligations, their use and knowledge of 'cost' and 'no cost' resources, and what SME owner/managers consider would better support their compliance experience. The purpose of this study is to extend existing research using a phenomenological approach to allow SME owner/managers describe their own experiences, as well as understand Stakeholder

perceptions' of SME compliance behaviours. By conducting this research, the findings from this study will help further address a gap in the current literature and add to the existing, albeit limited, research.

3 METHODOLOGY

3.1 Introduction and Purpose

This Chapter defines the research methodology deployed to answer the questions the project seeks to explore, namely:

1. What advantages and challenges do SME owner/managers perceive in meeting their employment-related legislative obligations?
2. What actions are taken by SMEs to meet employment-related legislative obligations and what is their awareness and use of the support strategies available to them? Also, what costs do they associate with compliance?
3. What additional support services do SMEs want in order to support their compliance with employment-related legislative obligations?

The literature review identified limited research into employment-related legislative compliance by SMEs in Australia, together with very few existing theories or associated hypotheses. The purpose of this research is therefore to engage in systematic and exploratory research in order to understand and interpret the factors associated with employment-related legislative compliance by SME owner/managers in Western Australia (WA).

The qualitative research interpretive paradigm allows data to be analysed by interpreting the words and actions of interviewees as social actors (Saunders, Lewis & Thornhill 2009). It is the “deep involvement with the research context” that enables a qualitative research approach “to develop theory based on inductive analysis of a real dataset” (Mansourian 2008, 284). Using semi-structured interviews to interview Stakeholders and owner/managers, this research seeks to identify opportunities for Stakeholders (Government, Unions and Employer Bodies) to expand support for SMEs to promote success in compliance with employment-related legislation.

The significance of the research embodies both the topic and the demographic. In considering the demographic, SMEs account for the majority of businesses in Australia and statistics denote their contribution as employers and exporters. In June 2014, 92.5 per cent of employing businesses were small businesses, two per cent were medium businesses, and less than one per cent were large businesses (Australian Bureau of Statistics 2015). Additionally, SMEs represented 90 per cent of Australian exporters (Australian Bureau of Statistics 2011a), were responsible for a third of all business expenditure on research and development in Australia (Australian Bureau of Statistics 2011b); and contributed 46 per cent of the gross domestic product (GDP) in 2006 (Australian Bureau of Statistics 2010a).

SMEs employ a significant percentage of the workforce and their viability and existence directly influences the Australian economy. While it is acknowledged that SME compliance obligations are broader than employment law, there is a relational aspect to employment-related obligations that can polarise SMEs and relevant Stakeholders (being Government, Unions and Employer Associations). Obligations placed on SMEs can have important time and cost implications while lack of employment-related compliance can have important

economic and safety implications for employees. While the economy and Government direction will influence where Australia sits on the unitarist/pluralism continuum at any point in time, there are potential gains for all parties if regulation is well developed and effectively implemented.

In seeking to answer the research questions, the objective of the research is to ascertain information that can be used to better inform Stakeholders about employment-related legislative compliance in SMEs in WA. The research approach, research paradigm, data collection design, participant sampling, coding and data analysis toward achieving the objectives of the research are now discussed.

3.2 Research Paradigm

The research decision is an iterative process and considers the research objectives and findings from the literature search and review. Paradigms are “patterns of beliefs and practices that regulate inquiry within a discipline by providing lenses, frames and processes through which investigation is accomplished” (Weaver & Olson 2006, 460) (Figure 3-1). The nature of this exploratory research determined a constructivist paradigm meaning that reality is constructed from lived experiences at a point in time (Stewart 2010). In this research, the construction of multiple realities of SME owner/managers traversing their employment-related compliance obligations emerged.

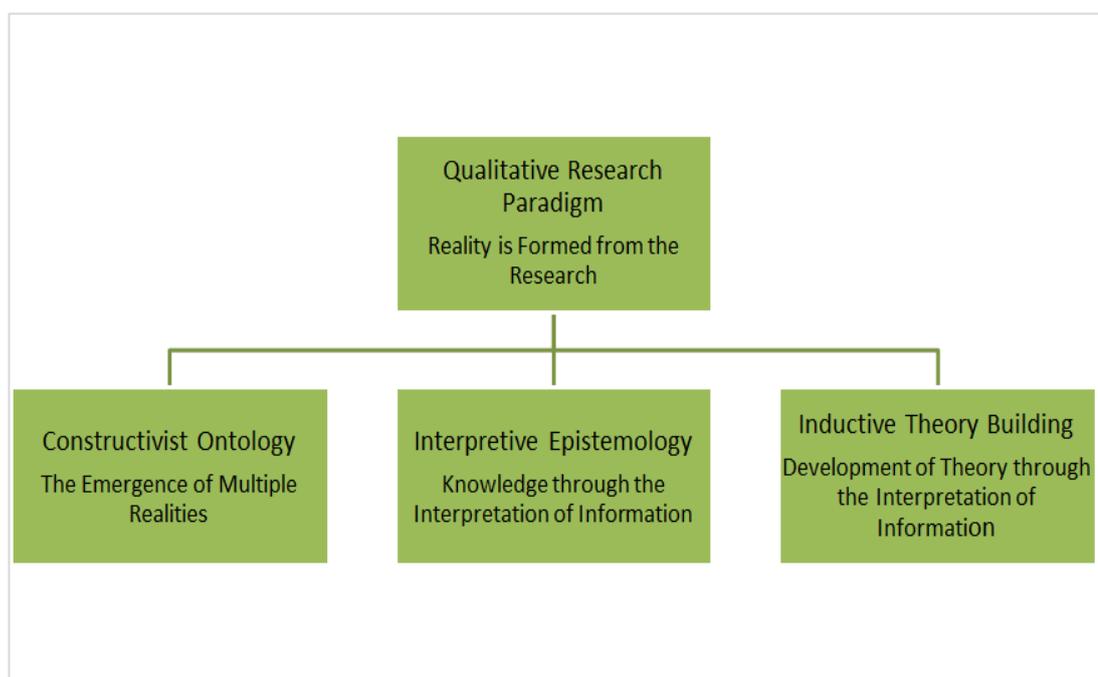


Figure 3-1: Qualitative Research Paradigm

The framework underpinning the research is developed from existing literature and resultant methodologies appropriate for examination of the research questions. The decision to undertake quantitative or qualitative research is fundamental: “When one chooses a particular research approach, one makes certain assumptions concerning knowledge, reality, and the researcher's role. These assumptions shape the research endeavour, from the methodology employed to the type of questions asked” (Hathaway

1995, 536). The research design is supported by the exploratory nature of the research and the paucity of existing theories. The decision to undertake qualitative research was based on critical examination of both quantitative and qualitative research characteristics which are summarised in Table 3-1. This table is based on a comparison analysis by Sogunro (2002, 5).

Table 3-1: Qualitative and Quantitative Research Characteristics

Factor	Qualitative	Quantitative
Data Collected	Soft Data	Hard Data
Data Collection Techniques	Active Interaction with Sample Population	Passive Interaction through Questionnaire or Experimental Design
Sample Population	Small Population	Large Population
Data Collection	Ongoing Observation and Interview	Before and After Training or Experiment
Relationship	Intense and Long Term with Subjects	Distant and Short Term
Research Context	Uncontrolled	Controlled
Data Analysis	Interpretive Analysis and Theme Generation	Statistical Analysis
Research Findings	Inductive through Critical Reflection	Deduction through Inferences from the Data
Research Instrument	Researcher as the Instrument	Questionnaires; Technology and Instruments
Interpretation of Results	Subjective	Objective
Nature of Inquiry	Interpretivist	Positivism
Research Tradition	Ethnography; Phenomenology; Case Study; Hermeneutics etc.	Descriptive; Correlational; Experimental etc.

Exploratory qualitative research relies on discovery and interpretation as opposed to testing an existing hypothesis. The research explored “what is happening; to seek new insights; to ask questions and to assess phenomena” (Robson 2002, 59, cited in Saunders et al. 2009, 139). It follows that multiple participants have different perspectives and, “the criteria of correct or incorrect answer is substituted by the criteria of a more elaborated answer” (Mantzoukas 2008, 375).

This research sourced multiple perspectives on SME compliance and allowed the emergence of reported realities to identify codes and themes as the research progressed. The ontological assumption was constructivist, whereby knowledge emerges through the researcher's interaction with the participant (Guba & Lincoln 1994). The epistemological decision was interpretive and SME experience with employment-related legislative obligations was composed through the interpretation of responses from participant interviews. A phenomenological research approach was adopted in order to source participant perceptions and experiences (Merriam 1988). Phenomenology is concerned with the study of experience and the premise that what we are told is reality (Moustakas 1994).

A qualitative methodology was used to undertake this exploratory research (Chenail 2011, 1715) with the objective of gaining detailed insight into the perspectives, experiences, behaviours and opinions of the participants. The research followed two sequential phases as outlined in Figure 3-2.

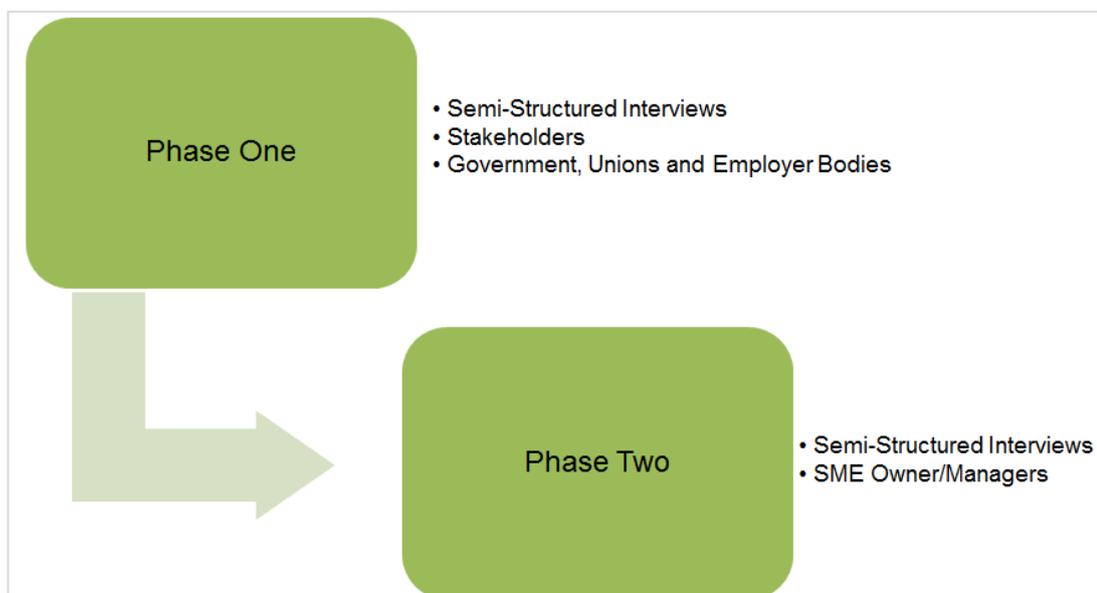


Figure 3-2: Two Phased Data Collection

Firstly, semi-structured interviews were conducted with Stakeholders (being Government, Unions and Employer Associations). This Phase One of the research sought to identify Stakeholder themes, and ascertain topics with the potential to augment the primary Phase Two data collection (Kelly 1999). Secondly, and to extend previous research, semi-structured interviews with SME owner/managers were undertaken in Phase Two to explore emerging themes and opinions that underlie the questions this research seeks to explore. Initial owner/manager interviews identified opportunities for improvement in the design of the semi-structured interview instrument and further minor improvements to the structure of the questions were introduced over time. The opportunities for improvement included the introduction of questions that asked owner/managers to share their knowledge of specific areas of the employment legislation (eg discrimination, modern awards, etc.).

The phased approach to this research, beginning with Stakeholder interviews, sought to first engage with 'experts' in the area of employment-related legislative compliance. Stakeholder participants had the potential to confirm and further identify research considerations to inform and broaden Phase Two of the data collection. As it transpired, only limited additional research considerations were provided during Phase One of the data collection; nonetheless, the Stakeholder respondents were able to provide a perception of SME owner/manager experiences and behaviours that could be compared with the reality provided by SME owner/manager participants.

3.3 Research Design

Maylor and Blackmon (2005) reflect that qualitative research is important in business and management research in that the research is as much about the people as it is about the organisation. Myers (2013) contends that it is talking with a person that allows the researcher to understand both their thoughts and their actions in a way that the written word cannot achieve. In seeking to explore and seek understanding from SME participants on the subject of employment-related legislative compliance and experience, knowledge building is based on interaction and the relationship between the researcher and the participants (Hesse-Biber & Leavy 2011). The interpretive epistemology and the ensuing semi-structured interview data collection recognised the individuality of the SME participants. Although all owner/manager participants were bound by the same employment-related legislative obligations and, to varying degrees, were without the critical mass to source internal industrial relations expertise, each organisation was an individual and not a collective.

Acknowledging prior research into employment-related legislative compliance by SMEs, a constructivist ontological assumption recognises: (a) the potential for diversity of opinion across the participants; and (b) polarisation of the Stakeholders. The assumption is a subjective reality which consists of "stories or meanings produced" through social actors (Hesse-Biber 2010, 26). In essence, the organisational culture derives owner/manager compliance behaviours as these are created by and through the actions of the individuals within that organisation. While it is acknowledged that the research engages SME owner/managers and does not extend to their employees, Berger and Luckman's "Social Construction of Reality" (1966) refers to leadership being socially constructed and institutionalised within social systems.

The nature of the research questions, coupled with a desire for a diverse range of participants, supported the use of semi-structured interviews as the data collection methodology across both phases of the research. Semi-structured interviews provide flexibility and the ability to be agile and responsive in pursuing information as the interview progresses.

As discussed, the interview purpose was exploratory and open questions were used to encourage SME participants to provide detailed insight into their perceptions and experiences in complying with employment-related legislative obligations (Grummitt 1980 cited in Saunders et al. 2009). While structured interviews support larger sample sizes and

can be executed using automated data collection tools, an interpretivist epistemology using semi-structured interviews is better suited to explore opinions as well as allow previously unrecognised experiences or perspectives to emerge from participants' discussions (Cunliffe 2011). Semi-structured interviews are a middle ground between structured and unstructured interviews in that structured questions, themes and prompts exist; however, access to new information and additional questioning is supported by the flexibility of the interview protocol (Pitariu, Andrei & Guran 2009).

The initial questions focused on awareness of employment-related legislation and inclination, ability and confidence to comply. Participants were asked to provide examples of their experiences with employment-related legislation and to share how they access information to support compliance. Perceived compliance costs (and nature of costs) were also in scope. Questions extended to knowledge, awareness and concern with increased compliance scrutiny and to what extent changing compliance requirements influence their business. Participants were given the opportunity to pose alternative compliance support models they consider could further assist SMEs.

Semi-structured interviews are appropriate when the researcher has sufficient knowledge of the research subject to allow the research questions to be developed and structured in a logical order (Richards & Morse 2007). However, domain knowledge of the research topic and any personal bias or experience must be acknowledged by the researcher in qualitative research. Bracketing of personal bias is necessary at all stages of the research so that personal assumptions are kept, "in perspective so that they don't pollute or prejudice what you've heard and observed" (Minichiello & Kottler 2010, 45). Although prompts were used during the interviews, the purpose of the prompts was to elicit additional information from the participant (Leech 2002).

3.4 Semi-Structured Interviews

Interview protocols are the rules that guide the administration and implementation of an interview. These include the instructions and etiquette that are pivotal to conducting an effective interview. Additionally, they are the foundation of rigour and quality outcomes.

Established interview protocols were followed in that the participant was made to feel comfortable and acknowledged that their time was valued. The pre-interview discussion provided background to the research and the role of the participant within the research. The informed consent pro forma (Appendix C) was signed by both the researcher and the participant and outlined important research guidelines including: interview rigour; participant anonymity; and, the ethical guidelines with regard to the security of the research data. Interview packs used for both Stakeholder and owner/manager data collection purposes are provided in Appendix D and Appendix E, respectively.

Qualitative research interviews require the researcher to remain neutral within the interview and to be mindful that their action or inaction can lead a participant in a desired way. It was important that the participants were aware that their opinion was respected and that they were not compelled to respond in a way favoured by the researcher. According to Given (2015, 88) "...although a one-on-one semi-structured interview in a quiet

room may seem less interesting, it may well be the best approach for the research questions". McNamara (1999) further highlights the importance of the preparation stage suggesting that the maintenance of an unambiguous focus will provide maximum benefits to the proposed research study.

There was no predetermined timeframe for the interview and the interviews ranged from 30 minutes to over two hours. However, in setting expectations, participants were advised to set aside between 60 and 90 minutes for the interviews. The interview questions were a combination of open and closed questions and probing questions were used to encourage participants to expand on information provided or in order to gain clarity. Additional questions were introduced when new information was provided and the order of questions was adjusted to encourage the flow of information and to achieve a logical discussion.

Whilst interview protocols may seem prescriptive, it is important that they are adhered to as the quality of the information obtained during an interview is largely dependent upon the researcher (Patton 2002). Rubin and Rubin (2005) contended that to get the depth, detail, and richness sought in an interview (thick description), researchers must develop a series of probe or follow up questions in addition to their main questions. Main questions get a conversation going on a specific matter and ensure that the overall subject is covered, whereas probes are standardised ways to ask for more depth and detail, and encourage the conversational partner to continue. Rubin and Rubin (2005) provided further advice to increase the quality of interview data. They suggested that if the conversation partners (being the researcher and the participant) can direct the conversation to matters that they know about and that they think are important, the interviews are likely to be of a higher quality. It was important to remain neutral when responding to participant answers, especially when taking notes, as the researcher's actions may influence the participants' answers which may lead to bias (McNamara 1999). However, at the same time it was necessary to engage with the participant in order to maintain interest and encourage open feedback.

3.5 Data Analysis Method

Data analysis was based on qualitative thematic analysis model as detailed by Clarke and Braun (2013). Thematic analysis provides a foundation structure; however, acknowledges continuous comparison of the data in that the six phased model is not linear. This method of data analysis allowed sufficient flexibility, while at the same time provided a sound framework to support a systematic and rigorous process. This combination of structure, flexibility and due diligence allowed the data to be confidently analysed from the point of inception (interview transcripts) through to the emergence of themes and superordinate themes.

Phase One's semi-structured interviews with Stakeholders sought to unearth their perceptions of owner/managers' experience with employment-related legislative compliance. Phase Two interviews served to gain owner/managers' perceptions of their reality in relation to the research questions.

The interviews were recorded using an iPhone, and subsequently transcribed and read repeatedly to discover regularly referenced concepts. The transcripts were augmented by notes taken by the researcher during the interviews with the Stakeholders and SME owner/managers.

The soft copy versions of the transcripts were colour-coded in Microsoft Word to highlight verbatim comments which formed the basis of initial coding. Microsoft Excel was then used to capture the colour coded verbatim comments, and preliminary descriptive codes and codes were identified from those comments. The initial coding was undertaken by research question level and this approach was taken to align verbatim comments within the context of the research question.

Numerous iterations of the coding were undertaken as preliminary descriptive codes and these codes were compared and combined to reduce granularity and achieve meaningful consolidation. Through constant comparison and consolidation, three rounds of coding resulted in preliminary descriptive codes being reduced by around 50 per cent from the initial number of codes. Through focusing and consolidating the codes, their meaning, theories and notions ensued. It became apparent through the coding iterations that there were similarities in the preliminary descriptive codes and codes that were relevant to one or more research questions.

Further analysis of verbatim comments was necessary prior to finalising the coding structure and establishing emergent themes. The data were revisited at preliminary code and analytical code level and this enabled the researcher to develop a coding structure across the data; however, still in context of the research question. Some preliminary descriptive codes were discarded at this stage, and others were amalgamated. While the initial analysis and coding by research question provided focus and critical examination of transcripts, the richness of the data came to life through continual refinement and emergence of meaning.

The data analysis of the Phase One and Phase Two interview transcripts was extensive due to the substantial database. Fifty (50) semi-structured interviews were conducted and these spanned between 30 minutes and two hours each. This resulted in 46 hours of interview recordings and almost 1,000 pages of interview transcripts.

By reading and re-reading transcripts, sorting of data, constant comparison and refinement by research question and across the data, preliminary descriptive codes and analytical codes emerged, as did distinctive themes from which meaning was able to be derived. As stated above, six phases of thematic analysis formed the foundation of this data analysis and provided a structure to guide the analysis and establish rigour (Table 3-2) with the objective of obtaining perspectives of how SMEs navigate their employment-related legislative obligations.

Table 3-2: Phases of Thematic Analysis

Phase	Description of the Process
1. Familiarising yourself with your data:	Transcribing data (if necessary), reading and rereading the data, noting down initial ideas.
2. Generating initial codes:	Coding interesting features of the data in a systematic fashion across the entire data set, collating data relevant to each code.
3. Searching for themes:	Collating codes into potential themes, gathering all data relevant to each potential theme.
4. Reviewing themes:	Checking if the themes work in relation to the coded extracts (Level 1) and the entire data set (Level 2), generating a thematic 'map' of the analysis.
5. Defining and naming themes:	Ongoing analysis to refine the specifics of each theme, and the overall story the analysis tells; generating clear definitions and names for each theme.
6. Producing the report:	The final opportunity for analysis. Selection of vivid, compelling extract examples, final analysis of selected extracts, relating back of the analysis to the research question and literature, producing a scholarly report of the analysis.

(Braun and Clarke 2006, 35)

3.6 Sampling

SMEs in WA come under Federal (incorporated corporations) or State (unincorporated) jurisdiction. Federal employers are required to comply with the *Fair Work Act 2009* (Cth) (FWA) and State employers are legislated by the *Industrial Relations Act 1979* (WA). For this reason, it was considered that WA provided sufficient depth of jurisdictional coverage to allow this research to be limited to a single State.

Data were drawn from owner/managers in WA SMEs in the Retail (for the purpose of this research, defined as sale of goods and/or services direct to consumers), Hospitality and Resource Sectors. In particular, organisations in the target population were those not anticipated to have access to in-house expertise in employment-related legislative compliance. The Retail and Hospitality Sectors were chosen because they have low profit margins (Australian Bureau of Statistics 2010b; Pech et al. 2009) and complex payrolls as a result of extended hours of trading. Both Sectors have also been the subject of employment compliance audits by the Fair Work Ombudsman (FWO) (Fair Work Ombudsman 2011). Anecdotally the Resource Sector is a contrasting Sector in terms of margins and profitability, while nonetheless retaining the same employment-related legislative obligations.

Merriam (2002, 12), encouraged researchers to collect data from multiple sources in order to, “enhance the validity of the findings”. With the objective of maximising the opportunity to find areas of contrast and commonality among agents who are often expected to have conflicting perspectives, the two participant groups were identified as:

1. Phase One: Stakeholders (Government, Unions and Employer Associations).
2. Phase Two: SME owner/managers.

The Stakeholder interviews sought to draw on the experiences of Government agencies, Unions and Employer Associations in their interactions with SMEs; specifically, to listen to their views and observations on how SMEs comply with employment-related legislative obligations. The SME owner/manager interviews sought to source real life experiences of the participants in their awareness of and compliance with employment-related legislative obligations.

In considering probability or non-probability sampling, the sampling approach needs to be evaluated in the context of the research objectives. Probability sampling provides all individuals with an equal chance of selection (Baker 2003), whereas non-probability sampling allows the researcher to contribute to the sample selection by applying judgement (Symon & Cassell 2012). The nature of the research was such that both participant groups (Stakeholders and SME owner/managers) needed to have an awareness of the research topic and were willing to share their experience. Accordingly, non-probability purposive sampling was used to identify Stakeholders and SMEs owner/managers in WA. Non-probability sampling is frequently used in qualitative research, and Saunders, Lewis and Thornhill (2009) describe purposive sampling as enabling the researcher to use judgement in selecting participants best able to meet the research objective or research questions.

Appropriate categories of Stakeholders were identified from the literature search and included Government bodies at Federal and State level, Unions and Employer Associations. SME owner/managers were identified from multiple sources including past participants of the Curtin Growth Program; recruitment proceeded via cold calling and emailing, and friends of friends. Further participant recruitment followed when participants referred the researcher to other SME owner/managers, and these SME owner/managers subsequently agreed to participate in the research. The template email invitation sent to potential owner/manager and Stakeholder research participants is provided in Appendix F and Appendix G respectively.

Recruitment and selection of the Stakeholder sample considered the need to source experiences and opinions from a sufficient range of Government, Unions and Employer Associations so that a balance of opinions, experience, observation and perspective was achieved. The importance of the contribution of these Stakeholders to the research is outlined in Figure 3-3.

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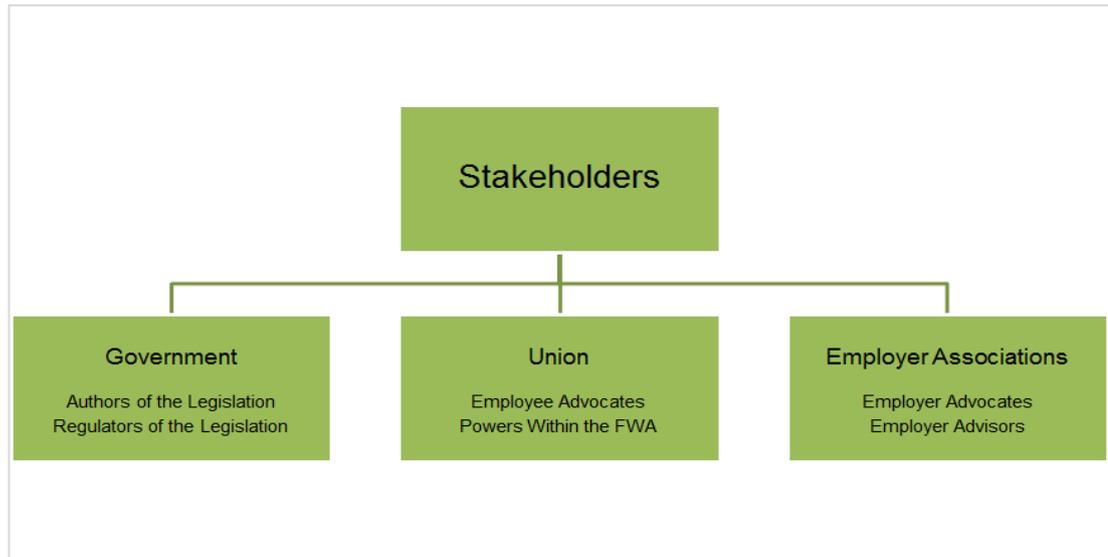


Figure 3-3: Stakeholder Contribution

The SME owner/manager sample reflected the context of a number of criteria that would be further examined in the data analysis stage of the research. While quota sampling is less rigorous than stratified sampling (Robinson 2014), there was no intent to gather participants according to a pre-determined matrix (Abbott & McKinney 2013). However, informal consideration was given to a sample frame criterion represented in Figure 3-4.

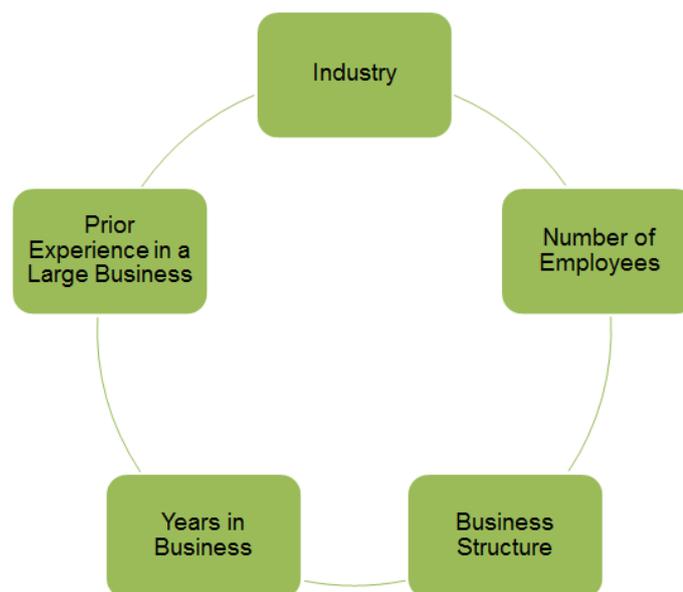


Figure 3-4: SME Owner Manager Sample Frame

The data collection continued until saturation; that is, when, “additional data collection provides few, if any, new insights” (Saunders, Lewis & Thornhill 2009, 235). In total, 50 semi-structured interviews were undertaken across Phases One and Two of the data collection.

3.7 Stakeholders

Stakeholders (Government, Unions and Employer Associations) are important participants in this research, as is their contribution to SME employment-related legislative compliance. While their perceptions are represented to a greater degree in professional commentary, their view on SME employment-related legislative compliance is less easy to find in academic research.

Through awareness of SME perceptions, Stakeholders have the ability to consider these experiences and beliefs in the development of Government policy and industry support. The researcher sought to establish how SME owner/managers viewed their employment-related legislative obligations as well as understand how Stakeholders perceived the way in which SME owner/managers navigated their obligations. In pursuing the views, opinions and experiences of Stakeholders, the researcher was able to reflect on existing commentary and identify pre-existing assumptions and conjecture as these relate to the experience of the SME owner/managers.

Stakeholders in this research include Unions and Employer Associations, entities that arguably represent opposing positions in the industrial context in their representation of employees and employers respectively. Government agencies charged with overseeing employment law compliance were the third Stakeholder group and each is now considered in the context of this research.

3.7.1 Unions

The Australian Bureau of Statistics (2014) reported 17 per cent of Australian employees were Union members at August 2013. The bureau noted Union membership had declined from 23 per cent in 2003 and that 17 per cent represented the lowest membership since reporting commenced (Figure 3-5).

By comparison, Union membership was at 50 per cent in the early 1980s and has notably declined since then (Peetz & Bailey 2012). Peetz and Bailey (2012) discussed factors that contributed to this decline, including the materiality of the Howard Government's *Workplace Relations Act 1996* (Cth) in this decline. This 1996 Federal industrial legislation made closed shops illegal (meaning employees no longer needed to be part of a Union to be employed in certain industries) and introduced the capability for employees and employers to negotiate individual agreements together as alternatives to industrial awards.

Increases in part-time and casual employment, together with a rise in independent contractors, have also been attributed to the decline of Union membership as has the decline of Union centric industries such as manufacturing. Additionally, Oliver (2014) notes the impact of privatisation of public sector bodies on Union membership decline, remarking that State Government employees were traditionally Union members. Specifically, Oliver points to the privatisation of large WA State Government agencies such as the State Electricity Commission and Westrail.

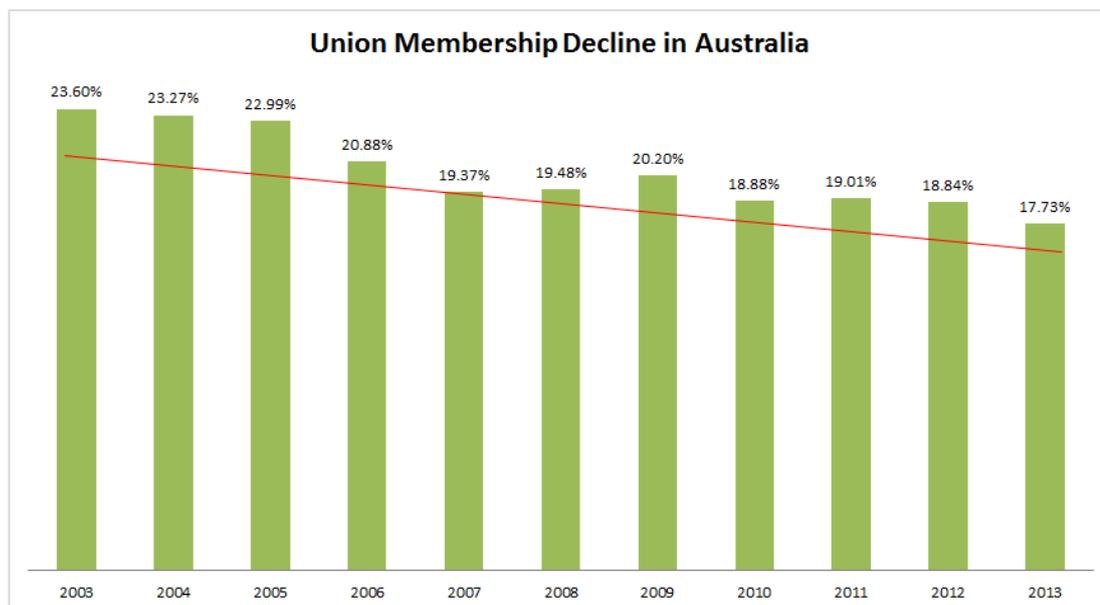


Figure 3-5: Union Membership Decline in Australia

(Source: ABS (2014) Catalogue 6310.0)

Notwithstanding a declining trend in Union membership in Australia, the FWA signalled a move from individual employer/employee agreements toward collective enterprise agreements. The foundation of an enterprise agreement under the FWA is good faith bargaining (Section 228) and this returns Unions to the bargaining table. Put simply; if one employee in an organisation is a member of an eligible Union, that Union is entitled to bargain on behalf of that employee (Part 2-4). Under the FWA, the Union is the 'default' employee representative and it is conceivable that enterprise agreement negotiations may consist of the employer, individual employee representatives, and one or more Union representatives.

The FWA also retained right of entry provisions, albeit with a number of restrictions introduced with Work Choices. Right of entry allows Union representatives to enter a workplace if that workplace has employees who are members of those Unions. There is no minimum requirement and the Union requires only one employee member to meet the right of entry obligations.

While Union membership is on the decline, it is important to compare Australia's position relative to countries such as the United States and France (Figure 3-6) (Organisation for Economic Co-operation and Development 2012). Unions continue to be important Stakeholders in the Australian employment landscape and their influence on employees and employers remains relevant.

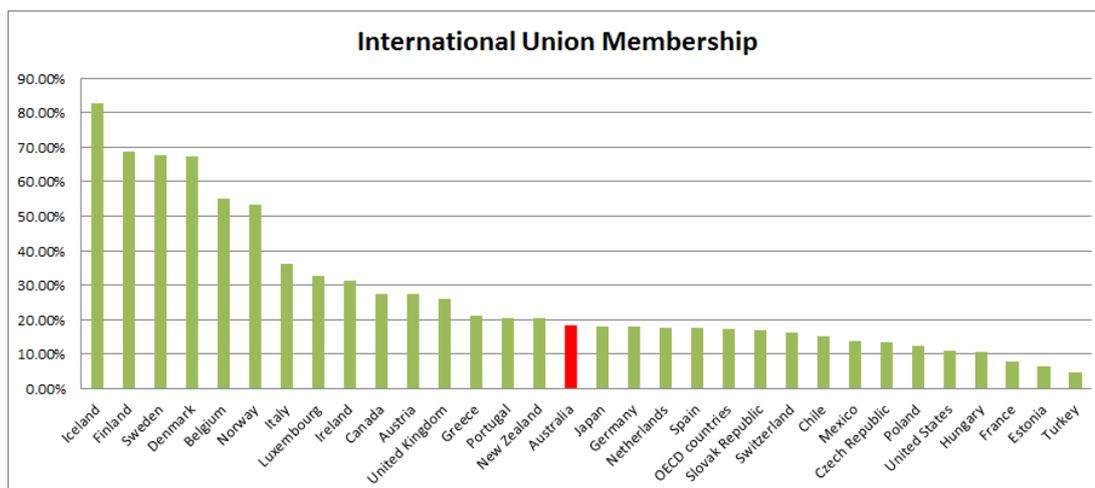


Figure 3-6: International Union Membership (2011)

(Source: Organisation for Economic Co-operation and Development (2012))

In reflecting on Union commentary with stereotypical viewpoint, it is not unreasonable to anticipate pro-employee/anti-employer oratory. In an address to the 2014 Council of Small Businesses of Australia (COSBOA) National Small Business Summit, Ged Kearney, President of the Australian Council of Trade Unions (ACTU), recognised this preconception. She shared, “I dare say some of you reflexively think of Unions as the enemy, regardless of how much actual contact you have had with us. Unfortunately some unionists also think of employers as the enemy” (ACTU 2014). In this same speech, Ms Kearney applauded the success of the Union movement in the protection of penalty rates and the safeguarding of employee entitlements. It is likely that those in Ms Kearney’s audience who were employers pondered their ability to pay.

The ACTU commissioned an inquiry into job security in the context of casual, insecure or precarious work. The focus of the inquiry was the deviation from permanent employment to casual employment and the social and economic implications of this shift. In discussing the underlying cause of the movement from permanent to casual employment, the ACTU made commentary on “rogue employers who steadfastly refuse to co-operate” and flaunt the obligations of the FWA (ACTU 2012, 36).

In a submission to a senate committee inquiry into the Fair Work Amendment (Small Business – Penalty Rates Exemption) Bill 2012 (Cth), the Australian Services Union put forward the view that small businesses are motivated by increased profits at the expense of their employees (Australian Services Union 2012). In contrast, the South Australian Branch of the Shop Distributive and Allied Employees’ Association entered into an agreement with Business SA which guaranteed a higher base pay for workers in lieu of penalty rate concessions on Saturdays and Sundays (Richardson 2015). While this could rightly be considered an example of Unions and SMEs working together, the Shop, Distributive and Allied Employees’ Association attracted criticism from both employer and Union bodies as a result of this initiative. Employer Associations considered the negotiated higher base rate of pay as an attempt to increase award rates and the Unions were concerned with the erosion of penalty rates.

When commenting on SME navigation of employment-related legislative obligations, at times the ACTU has taken a relatively balanced and pragmatic position. In a 2005 submission to a regulation taskforce concerned with reducing regulatory burden on business, the ACTU did not condone leniency on the basis of business size; however, did consider that there may be a need to help SMEs meet their obligations (ACTU 2005b). Nonetheless, in a 2005 submission to a senate inquiry into dismissal policy, the ACTU disputed that SMEs faced an employment-related compliance burden (ACTU 2005c). Accessing literature in support of this contention, the ACTU made the following propositions:

1. Compliance with employment-related legislative obligations was a minor factor when considered with other challenges experienced by SMEs.
2. When asked, SME owner/managers were unable to put a cost on the unfair dismissal risk of employing one more employee.
3. When compared to other countries, the Organisation for Economic Co-operation and Development ranked the burden of unfair dismissal compliance in Australia in the lower ranges when compared to the pecuniary penalties and compensation payable by employers in countries where the burden of unfair dismissal was ranked in the middle and higher ranges.

(ACTU 2005c)

This 2005 ACTU submission referenced studies which reported SMEs rated the burden of employment-related legislative compliance below that of other compliance obligations. The submission omitted references to research which found employment-related legislative compliance to be burdensome to SME owner/managers (Robbins & Vol 2005). Nonetheless, the ACTU submission did acknowledge that SMEs were required to navigate a number of internet sites to source the employment-related legislative support they required. There was also recognition that SMEs would benefit from a single source of information.

3.7.2 Employer Associations

Employer associations and political commentators aligned with employers can be judged as equally polarised in their opinions. In his column in *The Age* newspaper, former Federal Coalition Minister Peter Reith drew a correlation between unfair dismissal legislation and the confidence of SME owner/managers to hire. Mr Reith's views were emotive and included rhetoric such as, "unfair dismissal is Australia's runaway growth industry, with no barriers to entry for a disgruntled former employee looking for a few quid" and "the very idea that the owners of Australia's two million small businesses wake up each morning and rub their hands together with Dickensian villainy looking for a reason to sack a valuable worker is laughable" (Reith 2015).

Kate Carnell, Chief Executive Officer of the Australian Chamber of Commerce and Industry, shared a similar view when stating that unfair dismissal laws discourage SMEs from employing additional staff (Hannan 2015a). Ms Carnell's predecessor, Peter Anderson, coordinated a 2013 pre-election campaign on the challenges of small business (Australian Chamber of Commerce and Industry 2013). Mr Anderson noted, "Australia has become a

very costly place for small business to hire, keep and dismiss staff. And when times are tough, that means jobs and hours get cut”.

The HR Nicholls Society is an organisation dedicated to reforming industrial relations in Australia. It could also be said with minimal fear of contradiction, that the society is pro-employer. While there is much commentary by the HR Nicholls Society on the challenges of SMEs, President Adam Bisits’s speech to the Australian Liberal Students’ Federation focused on the bureaucracy of the FWA (HR Nicholls Society 2014). The context of Mr Bisits’s speech was a widely publicised matter from regional Victoria where a small hardware company was unable to employ students after school as a result of a minimum three hour clause in the modern award. While the substance of Mr Bisits’s speech was the right of parties to seek a variation to the modern award, Mr Bisits was critical of what he considered to be an onerous process for small business and student employees toward achieving this variation to the modern award in the Fair Work Commission (FWC). Mr Bisits voiced the following hindrances:

1. The Unions raised the dispute; not the students.
2. Hearings were held over five and a half days.
3. The hearings were held in Melbourne and Sydney and not in the regional town.
4. Reaching an agreement to vary the three hour minimum shift took 16 months.

(HR Nicholls Society 2014)

Liberal Senator, Eric Abetz, provided commentary on the FWA and Fair Work Australia (the Fair Work Commission from 1 January 2013). Reporting in Australian Polity (2013), Senator Abetz noted SME challenges as being: a ‘one size fits all’ industrial landscape; inconsistent and contradictory advice from the Office of the FWO; limited flexibility to run their business to a profit; and penalty rates inhibiting SMEs to trade outside of the span of hours.

Finally, Ken Phillips, Executive Director of Independent Contractors Australia, implored Queensland Premier Campbell Newman to ‘bring back’ the industrial relations powers to the State (Independent Contractors Australia 2012). Mr Phillips proposed the development of a simple State-based industrial relations environment for small businesses and contested that the FWA was, “...designed by big business, big Unions, big Government and big lawyers to look after ‘big’”.

3.7.3 Government

Government literature is a combination of research and publication by statutory authorities, together with commentary from all sides of politics. Case law is also relevant and Magistrate Hawkins sent a clear message to SME owner/managers on their compliance obligations. Magistrate Hawkins stated, “there is a need to send a message to the community at large and small employers particularly...steps must be taken by employers to ascertain and comply with minimum entitlements. Compliance should not be seen as the bastion of the large employer” (*Fair Work Ombudsman v Bosen Pty Ltd and Others (Industrial)* [2011] VMC 21 at 51).

A 2015 submission by the Office of the Australian Small Business Commissioner into inhibitors to hiring suggests that SMEs may be reluctant to hire for the following reasons:

1. Complexity, particularly with modern awards;
2. Fear of unintentional noncompliance; and,
3. Penalty rates making it uneconomical for businesses to open on particular days.

(Australian Small Business Commissioner 2015, 9)

This 2015 submission provided a number of recommendations aimed at supporting SMEs to employ staff and these recommendations appear to be pragmatic and practical. The recommendations recognise some of the potential barriers to SME owner/managers trying to source information to support compliance with employment-related legislation and offered improvements. The implementation of some or all of the recommended improvements from the submission by the Office of the Australian Small Business Commissioner (2015) will likely be a positive initiative for SMEs.

3.8 Research Rigour

In the pursuit of all high quality research, the challenges in obtaining data that are trustworthy and rigorous are well represented in the literature (Bashir, Afzal & Azeem 2008; Golafshain 2003). Data for this research were gathered through semi-structured interviews and interview protocols were developed to optimise the quality of the data. Extensive literature exists on interview behaviour and the development and structuring of interview questions (DiCicco-Bloom & Crabtree 2006; Qu & Dumay 2011; Whiteley et al. 1998), and these resources were accessed when developing the interview protocols and interview questions.

Stiles (1993) suggests that all research is subject to bias; and not just in relation to qualitative research. He contests that strategies to achieve rigour and minimise subjectivity are still subject to, “distortion by investigators’, participants’, and readers’ expectations and values” (Stiles 1993, 613). Notwithstanding, to mitigate potential bias, this research adopted a qualitative research framework that adhered to the principles of: credibility; dependability; confirmability; and, transferability (Lincoln & Guba 1985 cited in Houghton et al. 2013). Houghton and colleagues (2013, 13) summarised these four principles and associated research strategies as outlined in Table 3-3.

Table 3-3: Research Rigour

Approaches to Rigour	Strategies
Credibility	Prolonged engagement and persistent observation Triangulation Peer debriefing Member checking
Dependability	Audit trail Reflexivity
Confirmability	Audit trail Reflexivity
Transferability	Thick descriptions

3.8.1 Credibility

In considering the credibility of the research, the researcher conducted 50 semi-structured interviews with Stakeholders and SME owner/managers. Additionally, multiple perspectives were drawn on by interviewing Government, Unions and Employer Associations, together with SME owner/managers from a number of industries, organisational size and tenure. Peer debriefing was somewhat achieved at the outset of the coding phase of the research by simultaneous coding of a small sample of interviews by both the researcher and the supervisor. This research did not use member checking; all interviews were transcribed and preliminary coding was 'in vivo'.

3.8.2 Dependability

The demonstration of dependability in qualitative research by way of an audit trail was categorised by Lincoln and Guba (1985) as:

1. Raw data being the interview pro forma and transcripts;
2. The tools that would illustrate data reduction;
3. Evidence of data analysis;
4. Process notes/journal;
5. Inquiry proposal, journal, peer debriefing, and
6. Information relating to the instrument development.

The researcher maintained adherence to a variation on these audit categories throughout, from both a process and an audit perspective. While the data analysis phase of qualitative research can be unruly at the outset, "total impression – from chaos to themes" (Malterud 2012, 796), a structured, systematic approach to coding and recording has the benefit of achieving an auditable research outcome while adding to the efficiency and effectiveness of the overall research.

3.8.3 Confirmability

Confirmability of this research is underpinned by the research protocols and design. The phenomenological perspective allowed participants to tell their experiences, and non-probability purposive sampling is a supported approach to identifying participants. The data analysis is documented and audited so that initial concepts through to themes and findings can be observed.

3.8.4 Transferability

Denzin (2001, 99) describes thick descriptions as “the art of giving an account of something in words. In interpretive studies, thick descriptions and inscriptions are deep, dense, detailed accounts of problematic experiences”. It is the thickness of the description that allows for the transferability of research. Semi-structured interviews allow participants to give their accounts of their experience and to tell it in their own words.

While researchers are not fully in control of the information offered by participants, they are able to develop and implement research instruments that encourage the participant to engage in open and honest conversation. They are also able to implement strategies to create an optimum interview environment and encourage dialogue by means of prompt questions and allowing the interview to flow naturally and outside of the question structure. While this research is exploratory rather than descriptive, the researcher sought to achieve detailed information from the participants in order to answer the research questions and achieve research findings that could be further considered.

The thesis describes the stages of the research and this spans verbatim recordings through to emergent superordinate themes. The level of detail provided at each stage of this research should assist with the transferability of the framework for future research.

3.9 Ethical Considerations

According to Given (2015), a researcher’s primary ethical consideration is their duty of care to research participants. This research involved interviews with Stakeholder groups and SME owner/managers and required initial and then annual approval from the Curtin University Human Research Ethics Committee. In attaining approval, the researcher was required to demonstrate compliance with the Australian Code for the Responsible Conduct of Research.

Ethical qualitative research required that the following considerations were acknowledged and addressed: (a) informed consent; (b) warranty of privacy and confidentiality; and (c) maintaining the safety of participants. Interviews did not commence until informed consent forms were signed by both the researcher and the participants and the purpose of the research was explained. Anonymity was achieved by maintaining a cross reference participant key in both hard and soft copy and locating the key in protected locations. The research references the category of the participant for the purpose of discussing the findings; however, does not identify the participant.

4 DATA ANALYSIS AND THEME DEVELOPMENT

4.1 Introduction

This Chapter details the data collection and coding method that underpinned analysis of data gathered in this research. The paucity of existing research into employment-related legislative compliance in SMEs (small and medium enterprises) and the focus of the research questions determined an exploratory approach to this research. In contrast to a deductive method of data analysis where key theories and variables can be identified before the research begins, an inductive approach starts with the participants' commentary. Inductive theory building allows the data collection and analysis to derive the findings as a direct result of the information obtained from participants. Put succinctly, "concepts are formed inductively, from observing reality" (Locke 2007, 882).

The data were analysed in two phases. Firstly, semi-structured interviews with Stakeholders (Federal and State Government agencies, Unions and Employer Associations) were analysed to provide insight into how Stakeholders perceive SME challenges and opportunities to comply with employment-related legislation. The second phase focused on the main data collection exercise and involved analysing data from semi-structured interviews with SME owner/managers in Western Australia (WA). Research findings emerged through interpretation of information sourced from both Stakeholder and SME owner/manager participants. This two-phased data collection approach provided understanding of how Stakeholders viewed SME owner/manager behaviours and experiences in meeting their employment-related legislative obligations, in comparison to the experiences sourced directly from the SME owner/managers.

4.2 Participant Overview: Stakeholders and Owner/Managers

Stakeholders were identified from the literature search and included Government bodies at Federal and State level, Union and Employer Associations. All Stakeholders engaged with SME owner/managers directly, indirectly, online, or face-to-face. Phase One semi-structured interviews with Stakeholders were able to inform the researcher and suggest questions to support Phase Two data collection. A two phase approach engaging Stakeholders and employers has been used successfully in employment research and can assist in providing a broader perspective of the research (Kelly 1999).

SME owner/managers were identified from multiple sources including past participants of the Curtin Growth Program, cold calling, unsolicited emails, and professional and social networks. Snowball sampling also ensued when participants referred the researcher to other owner/managers who agreed to participate in the research (Bogdan & Biklen 2003).

4.2.1 Stakeholder Participants

Stakeholder participants from Federal and State Government agencies, Unions and Employer Associations are significant influencers in this research. Each group makes a contribution to the experience of SME owner/managers in their efforts to comply with

employment-related legislation (Figure 4-1). Federal and State Government agencies seek to educate both employers and employees on employment-related legislation; however, they also hold a mandate to monitor and regulate compliance. Unions engage with employees to protect their rights and entitlements in the workplace. Employees also approach Unions to source and verify information on employment-related entitlements. Employer Associations include industry specific and commercial bodies that provide employment-related fee-for-service consulting and advisory support to employers.

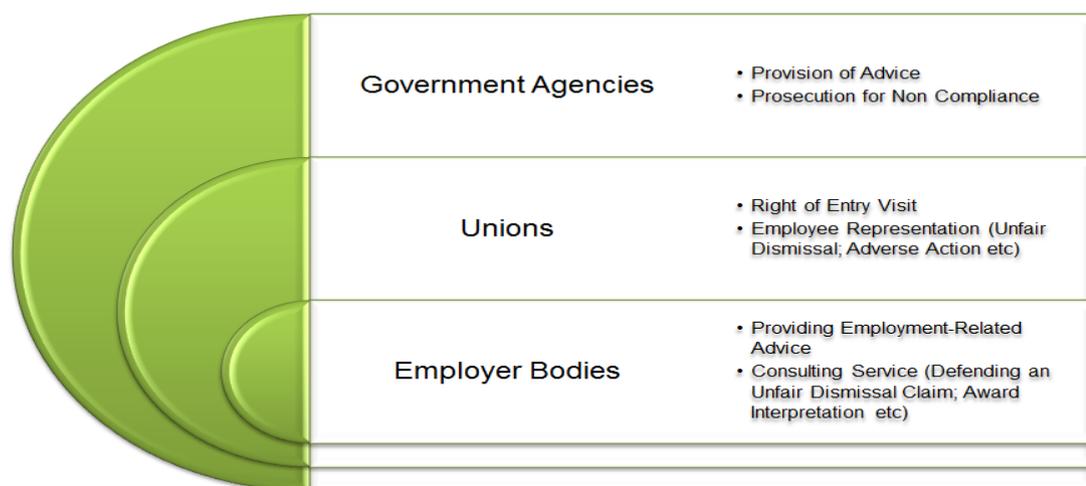


Figure 4-1: Stakeholder Focus by Category

Stakeholder participants comprised Government, Unions and Employer Associations and Table 4-1 provides a de-identified summary by group and category.

Table 4-1: Stakeholder Participants by Category

Stakeholder Group	Category	Count
Government Agency	Federal	1
	State	3
Union	National	2
Employer Association	Industry Association	2
	Consultancy	1

While there is diversity in the traditional function of each of the Stakeholder categories (as presented in Figure 4-1), there was a degree of consistency amongst participants when asked to provide their observations and perspectives on how SMEs navigated and complied with their employment-related legislative obligations.

4.2.2 Owner/Manager Participants

Data were drawn from SME owner/managers in WA in the Retail (sale of product and/or services direct to the public), Hospitality and Resource Sectors. In particular, organisations

in the target population were those that were not anticipated to have access to in-house expertise in employment-related legislative compliance. Table 4-2 provides a de-identified summary of the owner/managers' organisations referred to in the discussion of the data analysis and research findings. By way of early discussion on the findings of this research, new start-up businesses in WA engaged in the exploration of natural resources, while employing fewer than 20 employees, had access to employment lawyers and in-house health and safety expertise. Retail service occupations, such as Hairdressers and Pharmacists, had access to industry associations that provided an effective and yet inexpensive service to assist with employment-related legislative compliance. While the Hospitality Sector has a strong industry association that advocates on behalf of employers, few owner/manager participants referenced this association as a source of assistance or expertise.

Table 4-2: SME Owner/Manager Participants by Industry

Sector	Category	Count
Resources	Supplier	2
	Exploration/Start Up	4
	Sub Total - 1	6
Hospitality	Restaurant/Café/Takeaway	7
	Catering	1
	Resort	2
	Sub Total - 2	10
Retail – Product	Bicycles	1
	Food	1
	Fashion/Arts	6
	Pharmacy	2
	Sub Total - 3	10
Retail - Service	Gardening	1
	Finance and Real Estate	5
	Funeral Director	1
	Allied Health	5
	Hair/Beauty	3
	Sub Total - 4	15
TOTAL		41

Although non-specific to the selection of owner/managers, data relating to the tenure of the business and the number of employees were collected in anticipation that tenure and employee count may be influential in how employment-related legislative compliance was

perceived and addressed. This organisational information is provided in Figure 4-2 and Figure 4-3.

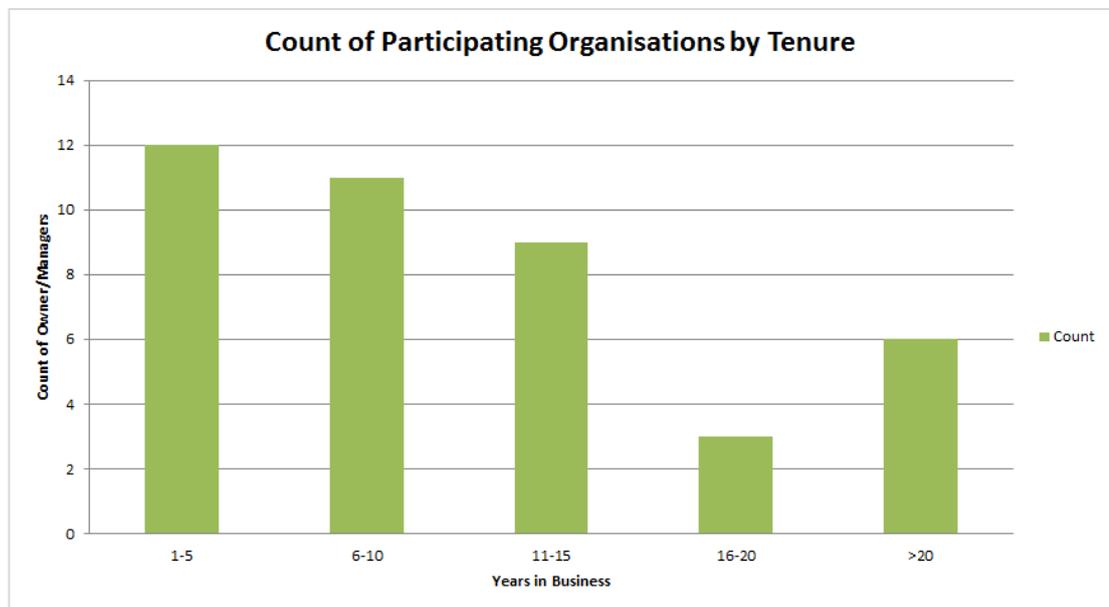


Figure 4-2: Participating Organisations by Tenure

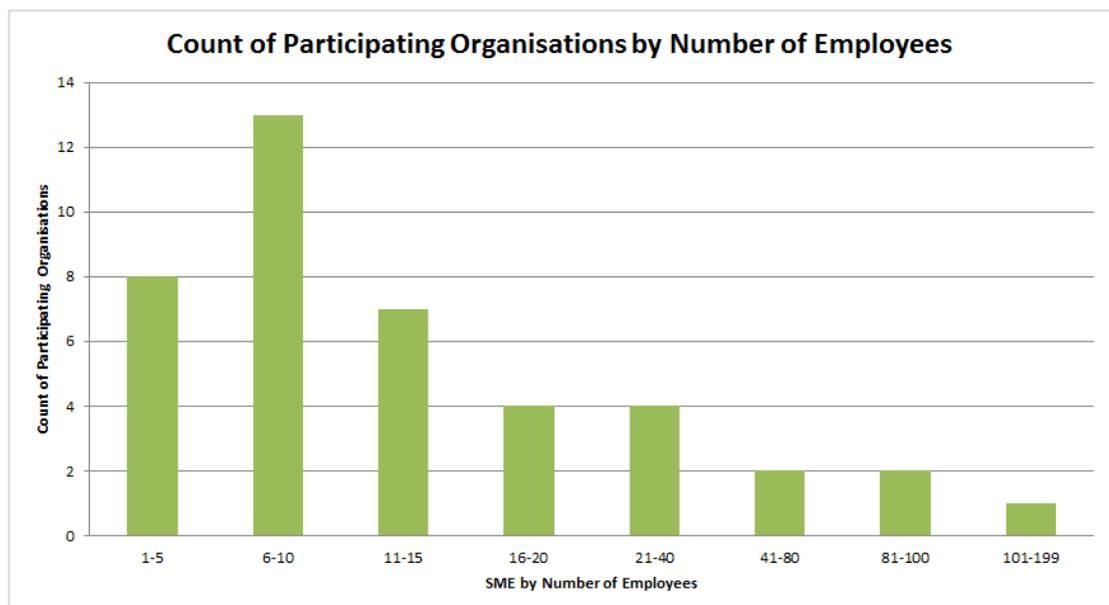


Figure 4-3: Participating Organisations by Employee Count

4.3 Data Analysis

The data analysis stage of the research involved reading, re-reading, sorting and deriving meaning from the semi-structured interviews conducted with 50 research participants. This Section describes the data analysis method, the reason for selection of this method and the phases of reducing and synthesising a significant amount of text into meaning, research findings and answers to the research questions.

4.3.1 Introduction

In total, 50 semi-structured interviews were conducted over a two year period. This led to the collection of 46 hours of interviews and just under 1,000 pages of transcript. The challenge was to synthesise this large amount of participant data with rigour and to discern meaning.

Data analysis involved Braun and Clarke's (2006, 35) six phases of thematic analysis. These six phases provided a framework for analysis, including the agility to support constant comparison of the data. Braun and Clarke (2006) acknowledged that qualitative research is not linear and constant comparison occurs throughout the research. They also anticipated movement across the six phases as emergent themes develop through an iterative data analysis process (Figure 4-4).

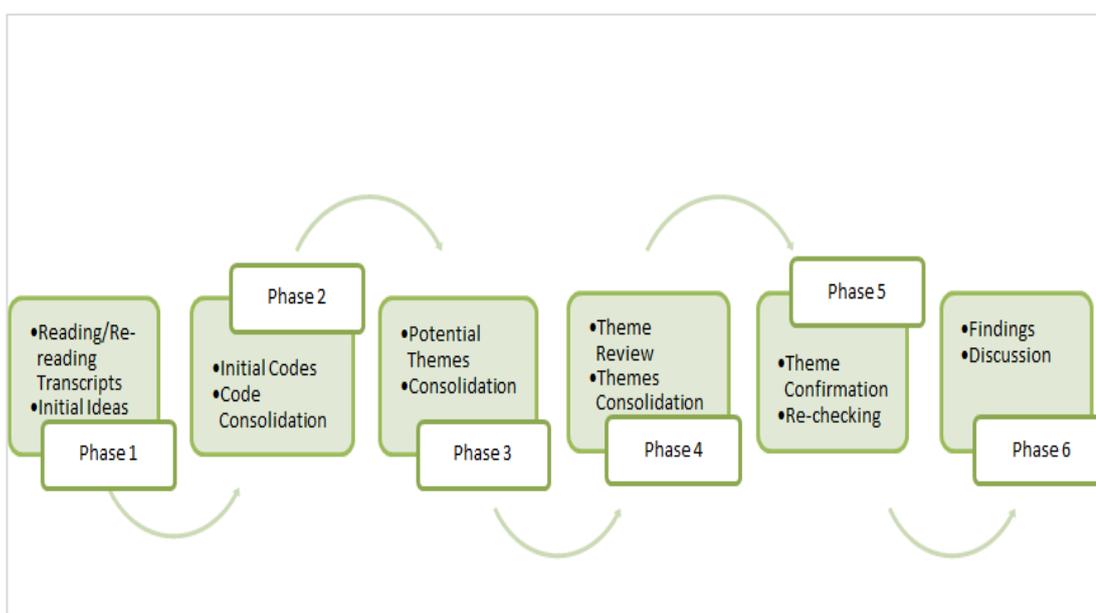


Figure 4-4: Baseline Model of the Six Phased Iterative Thematic Analysis

The data analysis was grounded in the interview transcripts and coded according to the relevant research questions developed earlier in the design stage of the study. This step was taken to ensure that the preliminary descriptive codes, analytical codes, themes and superordinate themes retained the integrity of the 'in vivo' words and phrases from which meaning was derived. The data analysis was then consolidated and five superordinate themes were confirmed. Figure 4-5 provides a summary of the data analysis process both inside and across the research questions; Section 4.3.2 describes the data analysis with reference to Braun and Clarke's six phases of thematic analysis.

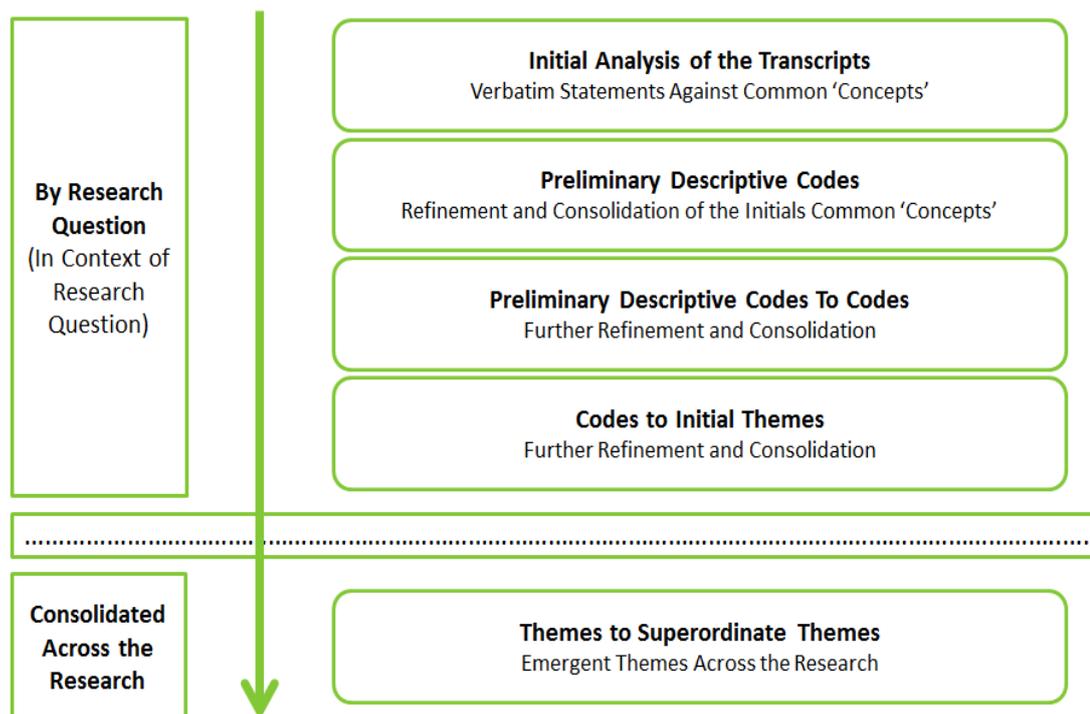


Figure 4-5: High Level Data Analysis Model

4.3.2 Six Phase Thematic Analysis

Although presented as six sequential steps, it has already been discussed that qualitative data analysis is not linear. Data analysis is an iterative process and codes and themes that may have been linked at one point in time, may be further consolidated, relocated or discarded as the analysis progresses. The repeated coding and re-coding may be the result of new data emerging as recordings are transcribed, or through the interpretive discovery of meaning by the researcher which can only be achieved by continued immersion in the data over a prolonged period of time (Bazeley 2013).

The data analysis was a combination of slow and methodical reading, sifting and sorting combined with fewer moments of realisation and inspiration. According to Willig (2013, 66), the researcher can reflect on the explicit content of what a participant has said ("manifest meanings"), or the researcher can interpret meaning into what has been said ("latent meanings"). Both approaches are permissible and often sequential and it is suggested that the data analysis underpinning this research commenced with greater reliance on the explicit meaning of the 'in vivo' text, transitioning to a deeper insight and interpretation of the data as the analysis progressed. In acknowledging this progression from descriptive to analytical coding, Willig (2013, 66) reflected on the attributes of an effective thematic analysis as "a combination of theoretical knowledge and understanding, as well as the ability to systematically yet creatively thematize and interpret data".

4.3.2.1 Reading and Re-reading the Text

Phase One Stakeholder transcripts were read a number of times prior to commencing the Phase Two data collection stage of the research. This preliminary pass could not be

considered a major part of data analysis as the purpose of this initial review of Stakeholder data was to inform the researcher of responses that may influence and augment the owner/manager semi-structured interview instrument (Kelly 1999). This initial analysis of Stakeholder data invoked only minor changes to the Phase Two semi-structured interview templates and the Phase One Stakeholder data was then more fully analysed as part of the overall research objective.

All interviews were recorded using an iPhone and subsequently transcribed into Microsoft Word. Phase One recordings were transcribed and coded first, and the Phase Two recordings were transcribed and coded in batches of ten. This progressive approach to transcription allowed for manageable amounts of data to be analysed without an unnecessary feeling of being overwhelmed by the data. All transcripts were augmented by written notes taken during the research interview.

Before reading each batch of interview transcripts, the researcher returned to the research questions. This step was taken to focus the data analysis on the questions the research sought to answer. The transcripts were initially read online and this allowed comments and notes to be inserted using standard Microsoft Word 'review' functionality. Verbatim comments were colour-coded and this initial highlighting had little structure other than to denote that the words, phrases or sentences were interesting and potentially relevant. In a second pass of the transcripts, colours were used to highlight text and the comment fields were cross referenced to different colours in order to loosely group a number of broad common concepts (Koshy 2010).

Next, data were transferred to a spreadsheet made up of multiple tabs. Each tab represented a research question and this method enabled initial coding to be organised with reference to the research questions. In addition to verifying the appropriateness of the coding in the context of the verbatim comments and the research question, this partitioning of the data supported greater focus and also assisted in the structured analysis of a large volume of text.

The initial format of each spreadsheet tab in Microsoft Excel consisted of verbatim responses, participant codes and common concepts and attributes. An extract of this format is provided in Table 4-3

Table 4-3: Extract of Initial Analysis of Interesting Responses and Concepts

Research Question 1	What advantages and challenges do SME owner/managers perceive in meeting their employment-related legislative obligations?	
Common Concepts	Verbatim Comments	Participant Reference
Making it up as they go along	<i>"How do I know what I don't know?"</i>	R2
	<i>"I think I'd wing it. Yeah, I haven't read anything or bought any information on that topic. So I guess I just do what I think is right."</i>	R4
Incorrect presumptions	<i>"We pay people so far out in front of any award payment that it is sort of a non-issue."</i>	RS3
	<i>"We're aware and they're aware when their overtime rates start and then that's factored in on the timesheet. What else was there?"</i>	R8
Working out how much effort to put into compliance	<i>"I should comply but at the same time I feel it's probably a little bit naive because I haven't been sued by an employee."</i>	H1
	<i>"So I was just like, I'm just going to wait and see. If someone calls me and goes "you're doing..." we'll fight that when it comes."</i>	R5
	<i>"If we get caught and fined every three years, then it might be worth not worrying in the interim."</i>	R1

4.3.2.2 Initial Coding

The next step of the data analysis involved revisiting the common concepts derived from the transcripts and clustering these against preliminary descriptive codes. The use of descriptive codes signified the start of a structured coding model and allowed the researcher to retain proximity to the data and familiarity with the 'in vivo' text (Gibbs 2007).

Preliminary descriptive codes remained attributed to verbatim words, phrases and sentences, and these descriptive codes were further analysed and consolidated. In the process, codes were discarded or amalgamated under broader analytical codes and this progression naturally reduced the number of codes by creating broader categories of analytical codes. The development of analytical codes requires greater consideration of the data in the context of the meaning derived from the participants' words. The researcher is

required to think about what has been said and the significance on the research generally (Richards 2009). Instead of reading a phrase as a descriptive phrase, the meaning of the words was examined and reflected on. By returning to data on multiple occasions and also having time to reflect away from the data, underlying meaning, motivations and considerations emerged.

Through constant comparison and consolidation, three rounds of coding resulted in preliminary descriptive codes reducing the number of codes by around 50 per cent from the initial number of codes. This stage of consolidation and the formation of analytical codes included a multi-research question view of the data. In doing so, it became apparent that some descriptive codes existed across one or more of the research questions and the analytical meaning was consistent. In other words, the researcher was able to map descriptive codes into analytical codes notwithstanding the initial categorisation according to research questions. This was able to be done without dilution or losing the essence of the original 'in vivo' text.

The preliminary descriptive coding model was still large from a data perspective and continued to be developed and managed in Microsoft Excel. An extract of this format is provided in Table 4-4.

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Table 4-4: Extract of Preliminary Descriptive Coding

Research Question 1: What advantages and challenges do SME owner/managers perceive in meeting their employment-related legislative obligations?			
Common Concepts	Preliminary Descriptive Code	Verbatim Comments	Participant Reference
Making it up as they go along	Lacking the effort to find out their obligations – not my problem	<i>“How do I know what I don’t know?”</i>	R2
		<i>“I think I’d wing it. Yeah, I haven’t read anything or bought any information on that topic. So I guess I just do what I think is right.”</i>	R4
Incorrect presumptions	Misplaced overconfidence	<i>“We pay people so far out in front of any award payment that it is sort of a non -issue.”</i>	RS3
		<i>“We’re aware and they’re aware when their overtime rates start and then that’s factored in on the timesheet. What else was there?”</i>	R8
Working out how much effort to put into compliance	Wait and see	<i>“I should comply but at the same time I feel it’s probably a little bit naive because I haven’t been sued by an employee.”</i>	H1
		<i>“So I was just like, I’m just going to wait and see. If someone calls me and goes “you’re doing...”we’ll fight that when it comes.”</i>	R5
		<i>“If we get caught and fined every three years, then it might be worth not worrying in the interim.”</i>	R1

4.3.2.3 Analytical Codes and Initial Themes

Hesse-Biber (2016, 337) described analytical codes as, “not tied as tightly to the text itself but begin to rely on the researcher’s insights for drawing out interpretation”. While descriptive coding was perhaps a simpler process, the volume of data made the management of the text challenging. However, progressing to analytical coding required digging deeper into the written word and this step was equally challenging in a more cerebral way.

The mapping from descriptive to analytical codes advanced through multiple iterations and analytical codes were added to, discarded, merged and renamed on more than one occasion. Critical examination of the data over a period of months found that stepping back and looking at the data at different stages of the analysis identified opportunities for refinement over time. The analysis continued to involve a return to the original transcripts in order to validate the progression of the analytical coding. An audit trail of multiple coding spreadsheets was maintained by the researcher and this ‘paper trail’ allowed the origin of the analytical code to be traced back to the ‘in vivo’ text. This return to the initial text was an important aspect when validating that the original meaning of the data was not lost or misinterpreted over the multiple iterations of analysis.

Initially the Phase One and Phase Two transcripts were analysed separately; however, the data were merged to create a final version of the analytical codes. The richness of the data and development of meaning came to life through this final consolidation phase. The transition from descriptive codes to analytical codes and onto the emergence of themes was a time of discarding data that had ‘survived’ until that time. In most cases this data had been reviewed and analysed multiple times over the course of more than a year. Almost unconsciously, effort was expended to retain data even when it had become clear that the data were not relevant to the important themes that provide insight to the research questions. Only after the decision was made to discard codes that lost relevance to the emergent themes did the remaining data become clearer and more transparent.

The transition to analytical codes involved data reduction and at this stage the data repository moved from Microsoft Excel to Word. Data were still held by research question; however, analysis was undertaken across the data. An extract of the transition from preliminary descriptive code to analytical code is provided in Table 4-5 and this extends the example analysis presented in Table 4-4.

Table 4-5: Extract of the Transition to Analytical Coding

Research Question 1		What advantages and challenges do SME owner/managers perceive in meeting their employment-related legislative obligations?		
Common Concepts	Preliminary Descriptive Code	Analytical Code	Verbatim Comments	Participant Reference
Making it up as they go along	Lacking the effort to find out their obligations – not my problem	Not Knowing What They Don't Know	"How do I know what I don't know?"	R2
			"I think I'd wing it. Yeah, I haven't read anything or bought any information on that topic. So I guess I just do what I think is right."	R4
Incorrect presumptions	Misplaced overconfidence	Over Award Employer Flexibility	"We pay people so far out in front of any award payment that it is sort of a non-issue."	RS3
			"We're aware and they're aware when their overtime rates start and then that's factored in on the timesheet. What else was there?"	R8
Working out how much effort to put into compliance	Wait and see	Estimating the Risk	"I should comply but at the same time I feel it's probably a little bit naive because I haven't been sued by an employee."	H1
			"So I was just like, I'm just going to wait and see. If someone calls me and goes "you're doing..." we'll fight that when it comes."	R5
			"If we get caught and fined every 3 years, then it might be worth not worrying in the interim."	R1

4.3.2.4 Theme Review and Consolidation

The iterative stages of identifying initial themes are a series of progressions and realisations. The data continue to come together and the deep meaning of the text is further understood. The development of the initial themes was undertaken as a hard copy manual exercise. Numerous pages of A3 paper were printed and these pages included the preliminary descriptive codes mapped to analytical codes. The underpinning verbatim comments and participant references were also included.

There is a different dynamic to reading hard copy text which can contrast positively to reading on a desk top or lap top screen. The A3 paper provided the text clearly and the researcher was able to view multiple pages simultaneously. The benefit of the latter was ability to cross reference data that looked similar or could be further condensed. It provided opportunity to identify analytical codes that were standing alone, but were essentially the same or similar. Having soft copy documents open at the same time allowed a key word or concept to be searched and this added to the overall effectiveness of the coding and validation. This was also an opportunity to establish the contribution by participants and to return to the transcripts where there was a dearth of verbatim comment attributed to one or more participant. This allowed the researcher to re-examine the transcripts for data that had potentially been overlooked.

Theme development and refinement is a critical stage of data analysis. This is the juncture where tens of thousands of 'in vivo' words are translated into meaning and the findings of the research are developed. Qualitative researchers need to be cognisant of potential bias in the interpretation of participant behaviour, comments and responses and must ensure that the themes and resultant findings reflect the meaning derived from the participant and not from the researcher. However, in contrast to descriptive phenomenology, interpretive phenomenology is supportive of the researchers' subject matter knowledge and connectedness to the research topic. Nonetheless, this does not obviate the need for researchers to 'bracket' any latent bias and ensure that the themes and findings are truly reflective of the research data and the meaning derived through participant commentary (Groenewald 2004).

Theme development is perhaps one of the most complex and demanding stages of the data analysis. It is the distillation of thousands of words into a handful of themes with the objective of capturing the essence of the participants' words. There is significant responsibility on the part of the researcher to apply diligence and respect the authenticity of the data. Qualitative data analysis is subjective and this places obligations on the researcher to take the time to revisit the data, challenge their thinking and develop findings that are accurately reflective of the data. According to Attride-Stirling (2001, 402), qualitative data analysis is "a necessarily subjective process capitalizing on the researchers' appreciation of the enormity, contingency and fragility of signification".

The theme realisation occurred over a period of time; however, after multiple refinements, twelve themes emerged. The themes were consolidated according to the studies motivating research questions and this penultimate step of the data analysis was the precursor to the consolidation of the findings and the development of five superordinate

themes that extended across the research. The twelve themes cross referenced to the research questions are provided in Table 4-6.

Table 4-6: Code to Analytical Theme Relationship

Research Question	Analytical Code	Theme
1	Over-award Employer Flexibility Not Knowing What They Don't Know Health and Safety	<i>Making Assumptions</i>
2	Personal Liability Audit by the Fair Work Ombudsman Experience with WorkSafe	<i>Priorities</i>
2	Government Services Industry Associations Fee-for-Service and Informal Resources	<i>Optimisation of Support Resources</i>
2	Difficulty in Framing the Question	<i>Complexity Impedes Usability of Resources</i>
2	Difficulty in Finding the Answer Inconsistent Answers	<i>Complexity Necessitates a Fee-for-service</i>
3	Overly Legalistic Wording	<i>Owner/Managers Want Simplicity</i>
1	Estimating the Risk Workarounds 'Go Away Money'	<i>Balancing Effort and Risk</i>
2	Time to Comply Cost to Comply	<i>Compliance Costs</i>
2	Fear of Fair Work Ombudsman Fear of WorkSafe	<i>Deterrents to Optimising Government Resources</i>
2	Family and Friends Accountant/Bookkeeper Network	<i>Trusted Advisors</i>
1	Degrees of Paternalism Power Imbalance	<i>SME Employer/Employee Relationship</i> <i>Perceived Unfairness and Overregulation</i>

4.3.2.5 Emergence of Superordinate Themes

Theme development emerged by analysing data in the context of each research question and this approach was taken to accurately interpret and draw meaning from the participants' words. As a final step, the analytical codes, themes and associated verbatim comments were analysed across the data and superordinate themes developed (Corbin & Strauss 2008). This final step identified findings that were pervasive across the data and these superordinate themes were grounded in the participants' perceived experiences with employment-related legislative compliance in WA SMEs.

The research identified five superordinate themes that emerged from the data drawn from Stakeholders and owner/managers:

1. *Effort*;
2. *Complexity*;
3. *Survival*;
4. *Trust*; and,
5. *Autonomy*.

The journey from raw data to superordinate themes was a lengthy and complex one; hence, the relationship between analytical code, theme and superordinate theme is restated in Table 4-7.

The validity of the superordinate themes was established by accessing guidelines provided by Braun and Clarke (2006), and those authors recommended the following enquiry when authenticating themes:

1. Is there sufficient data to support the theme?
2. Are there conflicts in the theme that would benefit from splitting the theme into two or more themes?
3. Are themes substantially the same and should they be consolidated? That is, is there sufficient distinction in the meaning or is further reduction necessary?
4. Does the theme provide meaning?

When applying these questions to the superordinate themes and critically examining the decision making and data analysis that led to the identification of the five superordinate themes, the researcher was able to defend the emergence of these final research outcomes.

Table 4-7: Code, Analytical Theme and Superordinate Theme Relationship

Research Question	Analytical Code	Theme	Superordinate Theme
1	Over-award Employer Flexibility Not Knowing What They Don't Know Health and Safety	Making Assumptions	<i>Effort</i>
2	Personal Liability Audit by the Fair Work Ombudsman Experience with WorkSafe	Priorities	
2	Government Services Industry Associations Fee-for-Service and Informal Resources	Optimisation of Support Resources	
2	Difficulty in Framing the Question Difficulty in Finding the Answer Inconsistent Answers Overly Legalistic Wording	Complexity Impedes Usability of Resources	<i>Complexity</i>
2		Complexity Necessitates a Fee-for-Service	
3		Owner/Managers Want Simplicity	
1	Estimating the Risk Workarounds Go Away Money	Balancing Effort and Risk	<i>Survival</i>
2	Time to Comply Cost to Comply	Compliance Costs	
2	Fear of Fair Work Ombudsman Fear of WorkSafe	Deterrents to Optimising Government Resources	<i>Trust</i>
2	Family and Friends Accountant/Bookkeeper Network	Trusted Advisors	
1	Degrees of Paternalism Power Imbalance	SME Employer/ Employee Relationship	<i>Autonomy</i>
		Perceived Unfairness and Overregulation	

4.3.2.6 Reporting Findings

The audit trail that was progressed throughout the research developed a record of multiple documents and versions of documents that reflected the non-linear sequence of the research. This record spanned the identification of initial concepts through to the emergence of superordinate themes. This audit trail was fundamental in providing the collateral and supporting material that underpinned the development of the Findings and Discussion Chapters.

4.4 Theme Discussion

Using semi-structured interviews to collect data, participants were asked a series of mostly open-ended questions which explored actions taken by SME owner/managers to comply with their employment-related legislative obligations. The questions also sought to discover owner/manager experiences in navigating their employment-related legislative compliance requirements and their awareness and use of resources available to them. Further, the perceived cost of compliance was examined and participants were asked to comment on the support and resources that could better assist with employment-related legislative compliance obligations.

The semi-structured interview questions and format used in both phases of the data collection (Phase One: Stakeholders and Phase Two: owner/managers) were materially the same; however, the questions were framed in a way that represented the role of the Stakeholder and the role of the owner/manager. Stakeholders were asked questions in the context of their observations and perceptions of the owner/manager experience and owner/managers were asked to relay their lived experience.

The superordinate themes are now discussed.

4.4.1 Theme: *Effort*

Figure 4-6 presents the thematic map of the superordinate theme *effort*. The theme of *effort* to comply is supported by three subordinate themes: *making assumptions*, *priorities* and, *optimisation of support resources*.

A subordinate theme, *making assumptions*, was informed by owner/managers talking about their employment-related obligations. Participants were asked to describe how they navigated a number of specific employment obligations and their responses identified varying levels of compliance. One group of owner/managers researched their obligations in order to be compliant. Some of these participants were self-sufficient and able to manage independently using Government resources; others accessed fee-for-service providers. Nonetheless, for the most part, participants were relatively uninformed and used their own *assumptions*.

"I know that I should comply probably more than I do, but I feel as long as you have a good rapport with your employees, it's fine." (H1)

"None of them are concerned on a weekly basis of getting it (payslip). It gets emailed through to them at the end of each month if there's any disputes." (R1)

In some cases these 'uninformed' participants talked with confidence about handling matters such as award flexibility, health and safety and other employment-related obligations. However, others were forthright in admitting that they did not know their obligations and were doing what they thought was right or what they thought they had heard from others.

"I mean, we try and provide a very, very safe workplace. We don't go into the fine tuning of what to carry, what not to carry, etcetera. We hope that the employees have some common sense." (H6)

"Probably to get an employment contract, I'd Google, "Standard employment contract." Something would come up and I'd go, "That'll do." (RS3)

Making assumptions was characterised by owner/managers' investing limited *effort* to inform themselves of their employment-related obligations; however, the theme *priorities* represented circumstances that could influence owner/managers to employ greater *efforts* to become informed. Analytical codes pertaining to experience with regulatory Government authorities such as the FWO and WorkSafe WA were collapsed to form *priorities*. Personal liability was also included in this theme. The prospect of being audited by a regulatory body or knowing another SME who had been audited by a Government agency increased an owner/manager's inclination to become informed and compliant. Owner/managers who were personally liable as a Board member or company secretary were also more diligent in taking *efforts* to become informed.

"I think we – the managers - are responsible for ensuring a safe workplace. They're constantly watching, aware of what's safe and unsafe for the employees." (H5)

The knowledge and use of available support resources such as Government agencies, industry associations and fee-for-service consultants, were merged to form the theme; *optimisation of support resources*. Multiple resources exist to support employment-related legislative compliance and these resources range from no-cost Government services through to employment lawyers. However, the *optimisation of support resources* was influenced by the time and *effort* taken by an owner/manager to research and avail themselves of these resources. Some participant owner/managers had no knowledge of Government agencies that provide 'free' services and others could not recall who they had contacted in the past. However, owner/managers who had invested time and *effort* to research and identify support resources felt they were able to benefit from a wide range of support and assistance.

"Yes, because I think the year before last I just did a Certificate IV in HR Management, just to get an idea of how things work. The lecturer who helped me gave me all these websites to refer to so I would go there and check what I was looking for. I used quite a bit there actually." (RS4)

The superordinate theme of *effort* to comply was characterised by Stakeholders who described owner/managers as being either “under-confident” or “over-confident”. Stakeholders also perceived that owner/managers generally do not intend to flout the legislation; although, their inaction can lead to non-compliance.

“I don’t think they’re all confident, you know.” (Union)

“I think they’re confident until something goes wrong and then they get really nervous.” (Government)

“I have met some, but not many, who deliberately set out to breach minimum pay standards.” (Union)

Stakeholder participants referred to owner/managers perhaps being aware of the correct base rate of pay for their employees, but considered that was the limit of their knowledge. Nonetheless, there was a collective view across Stakeholders on the impact of a Government audit. They perceived that an audit would increase an owner/manager’s attention and investment in their employment-related legislative obligations.

“The more someone’s likely to be inspected, actually is a bit more of a motivation for them to comply as well.” (Union)

“We want people to know that there are consequences if they don’t get the obligations or their requirements correct.” (Government)

The superordinate theme *effort* to comply is underpinned by motivation and inclination to comply. Other factors such as *complexity* and *business survival* are related and these are discussed in the next two Sections of this Chapter.

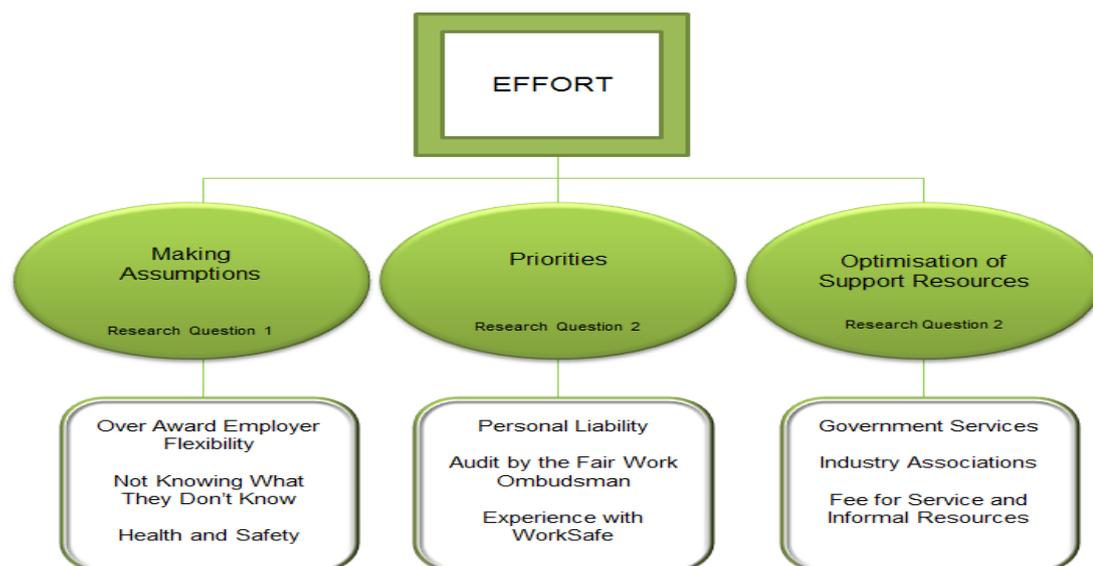


Figure 4-6: Thematic Map for the Superordinate Theme *Effort*

4.4.2 Theme: *Complexity*

Complexity of employment legislation is represented in a thematic map in Figure 4-7. Three subordinate themes emerged throughout the data analysis (*complexity impedes usability of Government resources, complexity necessitates a fee-for-service, and owner/managers want simplicity*) and these themes were the result of analytical codes that had been merged in the process.

Owner/manager experience in accessing Government support services and resources gave rise to the subordinate theme; *complexity impedes usability of Government resources*. Data collected from owner/managers incorporated observations that included their difficulties in knowing how to ask the right question when seeking advice and assistance to support employment-related legislative compliance. The data also illustrated difficulty experienced by owner/managers when interpreting answers provided by Government support agencies. Inconsistency of information provided by Government representatives and overly legalistic wording led to a further level of *complexity* that *necessitates a fee-for-service* investment.

“The most difficult thing is finding what you actually need from the site.” (RS2)

“When the modern award came in they developed all the contracts, you know, from a legal perspective it would have cost us far more to go to a lawyer.” (R21)

When asking owner/managers to describe the services and resources that would best support their employment-related obligations, participants referred to concepts such as: a ‘one stop shop’; proactive contact by Government agencies; and workflows and checklists. They also reported a desire for definitive black and white answers that did not require them to have intimate knowledge of the intricacies of the legislation. The analysis led to the emergence of the subordinate theme, *owner/managers want simplicity*.

“It needs to be something that is simple enough to be referred to each day, concise, plain English, beneficial.” (R15)

“Something that actually knows about small businesses and small businesses under 15 employees don’t have the resources. How about having resources saying, “We understand you’re a small business.”” (R12)

Stakeholder participants spoke at length about their perceptions of employment-related legislation. They held a number of observations on the challenges of owner/managers and reflected that *complexity* of employment-related legislation impacted SMEs capability to comply. Stakeholders talked about the extensiveness of the legislation and some held a view that the *complexity* of employment-related legislation is such that owner/managers could not navigate their obligations without expert help. Some Stakeholders considered that the online services provided by Government agencies were an inadequate response to a topic of such breadth and *complexity*.

“The legislation is particularly complex. The last five years have been very, very difficult. When we had the NAPSAs in play and people would say to us, “Oh, this NAPSA, can I download a copy of it?” Well, the answer is no. If you say to the

Government, "I want a copy of the Shop and Warehouse Award NAPSA, you know, the rates of pay as at today," there isn't one." (Union)

"Unless they have the capacity to employ a specialist person to properly advise them and keep an eye on things for them, they have no chance." (Employer Association)

Stakeholders reported mixed views on the competence of agency personnel who answer Government hotlines. Union participants described situations where owner/managers had relied on Government advice and this advice had been incorrect. Employer Associations also questioned the quality of Government resources while Government participants acknowledged that the breadth and *complexity* of the legislation made the provision of a 'simple' service impossible.

"We had a member rang me up and said, "Look, I'm getting paid this." So I went over and saw them and said, "Look, you're underpaying this bloke by 100 bucks a week. What's going on?" And the old lady, who was just charming, pulled out this sheet she'd got from the Government but it was wrong. So we had to prosecute because this bloke was owed heaps of dough. It wasn't their fault; it was the agency's - what they'd sent her was wrong. So, every time I walk past that shop I cringe." (Union)

"I think if someone was trying to find their rate of pay for the first time they'd be better off to call because, you know, you need the relevant instrument and those sorts of things for the pay calculator to work." (Government)

The superordinate theme *complexity* of employment-related legislation is embedded in the direct and indirect consequences of the *complexity*. Government resources, while extensive, were found to be hindered due to the *complexity* of the legislation. Owner/managers found to be motivated to meet their employment-related obligations often by-passed Government resources. Instead they looked to engage fee-for-service assistance. At the same time, the support service sought by owner/managers was grounded in simplicity and represented the antithesis of the employment-related legislation.

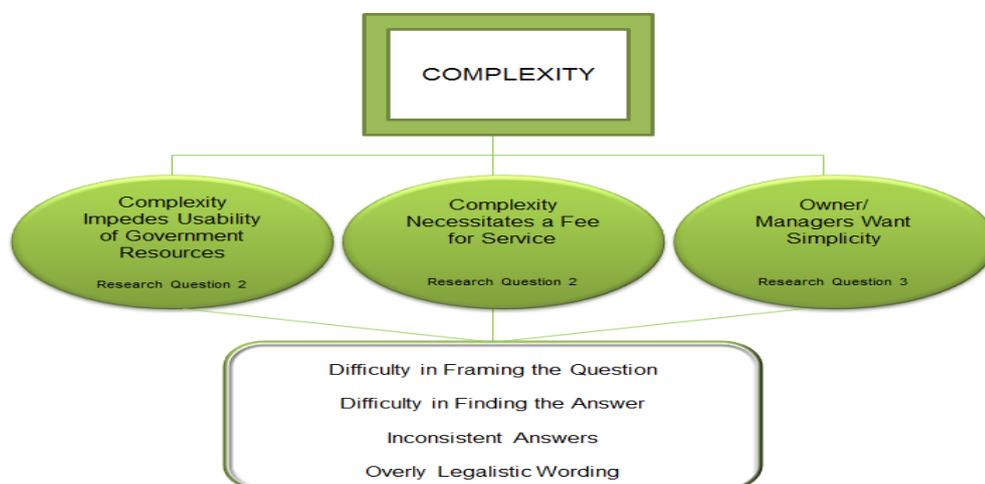


Figure 4-7: Thematic Map for the Superordinate Theme *Complexity*

4.4.3 Theme: *Survival*

The superordinate theme, *survival* is illustrated in a thematic map in Figure 4-8. The two subordinate themes of *balancing effort and risk* and *compliance costs* were collapsed in the final stages of data analysis when owner/manager avoidance behaviours were found to be inherently grounded in business *survival*.

Owner/managers took a balanced view when estimating the *effort* to contribute to employment compliance. Their *effort* to comply was characterised by the use of 'workarounds' to avoid non-compliance exposure, along with their decision to pay 'go away' money to settle a dispute. 'Workarounds' could be characterised as proactive strategies to avoid risk and these included, employing casuals to avoid unfair dismissal and terminating employees in the first six or twelve months of their employment.

*"So we've had one casual staff member that we didn't give any hours to anymore."
(R8)*

"Casuals, we tend to not roster them on. So we type of force them to leave." (H6)

Owner/managers reported reaching agreement to pay 'go away money' in settlement as an alternative to the risk of investing more money and time in protracted action. It was found that owner/managers used workarounds and 'go away money' to *balance effort and risk* with the *survival* of their business.

"We'd just say pay them \$5,000 it's going to save us enormous amount of stress and grief." (R3)

"Yeah, it cost \$11,000.00, but move forward, it was healthier for the business." (R7)

Some owner/manager participants talked about balancing the time and *effort* to comply with the risk of being found to be non-compliant. This risk assessment was undertaken in the context of time spent on their business and *survival*. Business competition and the quality of their products or services were considered material to whether or not they survived as an SME, and these had to be their priorities.

"You're trying to keep the wolves from the door, you have to cut things that aren't essential, things that are unessential to actually bring money in the door." (R1)

"That's too much of my time, too much of my energy. I've got all these other things that are better for my business." (R15)

Stakeholder participants recognised the challenges of owner/managers and their efforts to remain in business. They reflected on the additional time required to manage 'red tape' and the impact this has on the work-life balance of an owner/manager. Most Stakeholders considered that owner/managers do not have the economies of scale to invest in expertise to assist with their employment-related obligations. Stakeholders also considered that such an investment would be a significant cost impost on revenue and/or profitability. Stakeholders reported that owner/managers balance their *efforts* with the risk of being caught and found to be non-compliant.

“They’re more concerned if their pies turn up as, you know, with a mouse in them, than they are about whether their employees are paid appropriately because it’s all about bread.” (Government)

“But a lot of the stuff is so unlikely to ever occur that they do a risk/reward balance in their heads and go, ‘No, it’s not worth worrying about’.” (Employer Association)

Stakeholder participants were unaware or did not discuss some of the ‘workarounds’ reported by owner/manager participants. Only one Stakeholder talked about owner/managers paying money at conciliation in preference to defending a claim for unfair dismissal or similar. This Stakeholder was an Employer Association and had assisted multiple SMEs navigate claims for unfair dismissal and to a lesser degree, adverse action. This Stakeholder participant expressed a view that the legislation is intended to drive owner/managers to pay ‘go away money’ and provides a no cost option for a disenfranchised employee.

Owner/manager participants were focused on spending time ‘on’ their business and this was characterised by achieving revenue and maintaining profit. In being asked their perception of *compliance costs*, there was disparity across the perceived time and money attributed to employment-related compliance. While some owner/managers considered a few hundred dollars a year to be expensive, others talked in multiples of this. Time influenced how participants met their employment-related obligations and the amount of time spent on compliance was evaluated and balanced against business priorities. Consistent across *compliance costs* was the perception that time and money taken from the business impacted on *survival*.

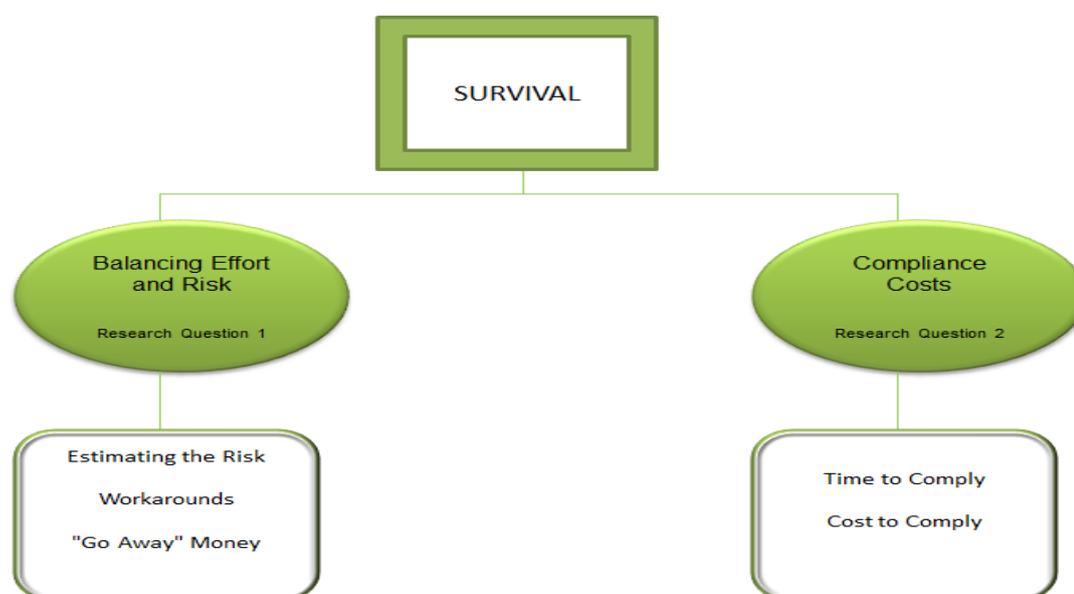


Figure 4-8: Thematic Map for the Superordinate Theme *Survival*

4.4.4 Theme: *Trust*

The superordinate theme of *trust* (Figure 4-9) characterises factors that motivate owner/managers to seek employment-related advice from ‘non-experts’ and *trusted advisors*. Owner/managers were found to be compelled to access people whom they *trusted* and in part this was grounded in fear and distrust of Government agencies. Participants talked about not wanting to attract attention and this was one of the factors that dissuaded them from accessing Government support and resources.

“Once you’ve actually stuck your head up out of the sand someone’s going to shoot it off.” (R12)

“In my experience, there is a lack of understanding and a lack of trust in the services that are offered from the Government perspective. The lack of understanding is that we’re going to get told we’re wrong, told off, get a fine, put on a blacklist, whatever, and a lack of respect for the information that they give.” (R15)

Another motivator to seeking assistance from non-experts was the safe environment that *trusted advisors* represented. Friends, family, accountants and business networks were identified as empathetic sources of support and provided assistance that was devoid of risk or judgement. Owner/managers were confident in accessing this informal network and talked warmly about their experience in sourcing assistance from their husband, wife, father-in-law, dad, sister, family accountant, business network and ex-colleagues.

“My husband has been absolutely awesome. He’s been around HR and all that sort of thing through his jobs that he’s done.” (R23)

“I wouldn’t but I was confident my husband would. He was a store manager for McDonald’s for about 10 years.” (H11)

“Because we’re a family business and we sort of don’t have, you know a huge amount of resources. So we have an accountant and we have a payroll officer, and she comes in two days a week and basically between herself and me, we handle all of that.” (R21)

The superordinate theme of *trust* denotes the desire of an owner/manager to seek assistance from sources that they have faith in and that they believe have their best interests at heart. In accessing *trusted advisors* as a source of support and assistance toward meeting their employment-related obligations, owner/managers were less concerned with the skills, knowledge and expertise of these individuals.

Stakeholder participants held a view that cost avoidance motivated owner/managers to access *trusted advisors*. Over reliance on accountants was also included in this perception.

“They don’t employ spend more than they need to.” (Union)

“But there are a lot of people who rely on their accountant. There are a lot of accountants who seemingly do just about every job under the sun. And I think clearly, accountants are a bit cheaper than lawyers.” (Government)

“Unfortunately, they go to accountants. And accountants are the worst people in the world for giving industrial relations advice, right. Ever try to convince an accountant that they’re wrong?” (Employer Association)

However, all Stakeholder participants recognised that owner/managers can be fearful of Government agencies and may consider engagement akin to ‘putting themselves in the firing line’. Government agency participants acknowledged that SMEs were often afraid to access Government support services and these Stakeholders recognised that their dual role as: (a) resource provider; and (b) regulator, could be contradictory.

“Small business fear it because he’s the policeman on the beat, and the problem with the Fair Work Ombudsman, it’s not about the Ombudsman as a single person, it’s about all their staff, right, because they’re like lightning - they don’t strike twice in the same place.” (Employer Association)

“Because I’m [Government agency] and they are afraid of me.” (Government)

Inflammatory media releases created by Government agencies with the objective of motivating owner/managers to be diligent in their employment-related legislative compliance, were recognised to potentially deter engagement with Government support services. While the media releases are intended to communicate that remedial action will occur if the legislation is breached, the potential shortcomings of the strategy were recognised by Stakeholder participants.

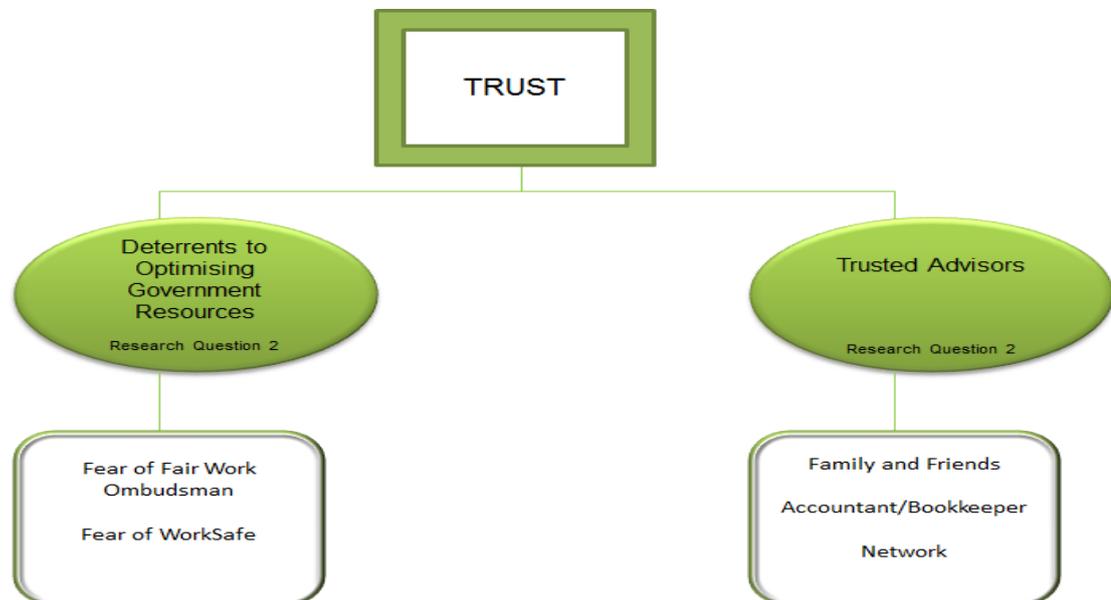


Figure 4-9: Thematic Map for the Superordinate Theme *Trust*

4.4.5 Theme: *Autonomy*

The final superordinate theme *autonomy* is illustrated in Figure 4-10. There are two subordinate themes to *autonomy* and these are: the *SME employer/employee relationship* and *perceived unfairness and overregulation*. Both themes emerged from analytical codes

that centred on the employee/employee relationship and a perception that external influence was unnecessary in a SME.

Owner/managers contend that SME employees and employers work in close proximity and do not need the same level of regulation required by large business. Participants referred to the personal nature of the SME employer/employee relationship, although acknowledged that a close working relationship can also have disadvantages. *SME employer/employee relationships* are underpinned by degrees of paternalism across owner/manager participants. Some owner/managers came from a position of 'my business/my way' while others featured somewhere between benevolent autocrat through to a genuine intent to form a mutually beneficial relationship.

"It's your business at the end of the day – it's like my house, if I have people come into my house, if I've got a person that I don't want to come into my house." (R5)

"So 'if you don't run down this path, well the only other path is you're not going to be required here.' So 99 per cent people, if they want a job here they'll change." (RS6)

"Then I'm happy to pay them whatever they're entitled to. If I get someone that's just not giving back - if I'm giving them 100 per cent, I expect 100 per cent back." (R23)

The natural power imbalance between the employer and the employee is a fundamental dilemma in delivering on the self-governance owner/managers seek. This imbalance was recognised in the analytical code, *power imbalance*. A preliminary descriptive code, *give and take*, had been collapsed to form *power imbalance* and this reflected that *give and take* by one party may be viewed differently to the other. The relative power of each party is central when determining if *give and take* is equal or if the power is held unilaterally by the employer.

"She sat down to have her hair coloured for two hours, but then she's bitching about she didn't get a fucking lunch hour. You know what I mean? I do gives and takes." (R24)

Stakeholder participants talked about owner/managers having disdain for external involvement in their employer/employee relationship. Union participants also reported arrogance in some cases. However, most recognised that owner/managers may feel overwhelmed and their lack of *effort* to comply could reasonably be the result of 'giving up' rather than arrogant *autonomy*.

"Why am I having to go through this? And that goes back to some of those behaviours that they simply brought, which is – there is a business mindset out there which says 'my business my way'." (Government)

"So I think for a certain percentage it's potentially a bit overwhelming and too hard." (Government)

Stakeholder participants talked about both the positive and negative aspects of the employer/employee relationship in an SME. Government Stakeholders recalled situations where employees had enjoyed substantial benefits from their owner/manager, but had been quick to lodge a claim with a Government regulator when a relatively minor compliance requirement had been overlooked. At the same time, Stakeholder participants talked about employees working in close proximity with the owner/manager and being reluctant to raise a concern regarding their employment-related entitlements. While the employee may seek external advice or clarification about the matter, they would not want either the Union or Government Stakeholder to intervene.

“You know, a guy takes on an apprentice and the young fellow’s struggling and he stays at the boss’s house for three weeks while he gets himself together, he goes there every night for dinner so he can have a reasonable meal, takes him under his wing. And then something happens, which turns it sour and the young guy wants to apply the laws retrospectively.” (Government)

“If you’ve got a problem with Phil Smith of Phil Smith’s Bait and Tackle, well, you know, you’ve got to front Phil every day. So a lot of them are loathed to speak out, that they’re probably more likely to just accept it.” (Union)

Perceived unfairness and overregulation was grounded in an owner/manager's perceived desire to run their business in a way that they saw fit. Legislation and external contributors such as Government agencies and Unions were considered to inhibit the employer/employee relationship and the ability of the parties to participate in joint negotiation. However, the perceived redundancy of external regulation would require equality in the employer and employee relationship and this would require giving employees equal bargaining influence. Without special skills or a unique value proposition, it would be difficult to contemplate such an environment for an employee.

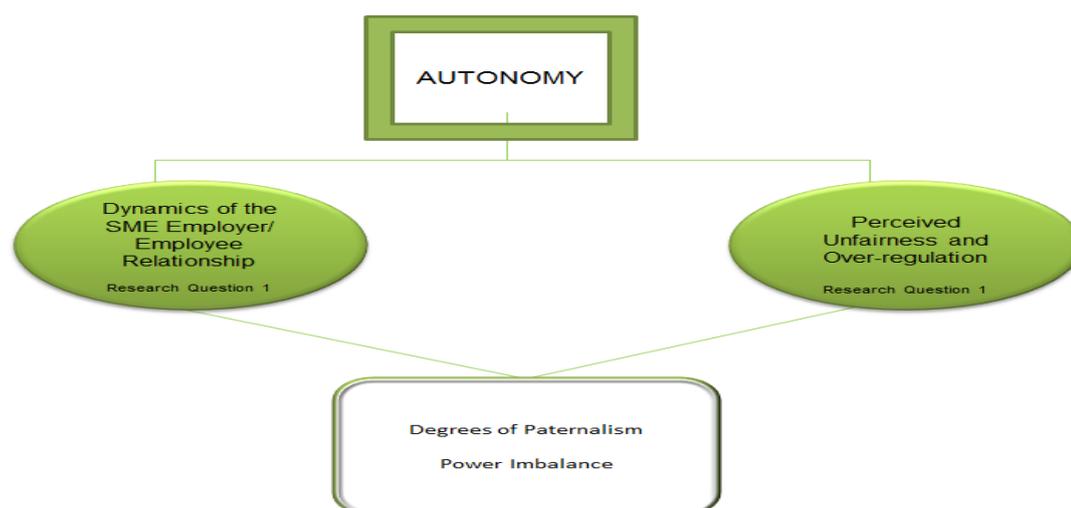


Figure 4-10: Thematic Map for the Superordinate Theme *Autonomy*

4.5 Summary

In this Chapter the research design, data analysis, preliminary descriptive codes, analytical codes, emergent themes and superordinate themes were presented. Thematic analysis was used to produce meaning and the data analysis spanned multiple non-linear iterations.

Responses to semi-structured interviews were collected from Stakeholders and SME owner/managers and these transcripts were distilled down to five emergent superordinate themes. These themes represented owner/managers participants' reality when navigating their employment-related compliance obligations. The themes also recognised Stakeholder perception of owner/managers' experience with employment-related obligations.

Figure 4-11 illustrates the potential causal relationships that may exist between the five superordinate themes and represents how *effort* contributes to the behaviours and experiences of SME owner/ managers when complying with employment-related legislative obligations. The following Chapter discusses the findings from the data collected and the results of the data analysis.

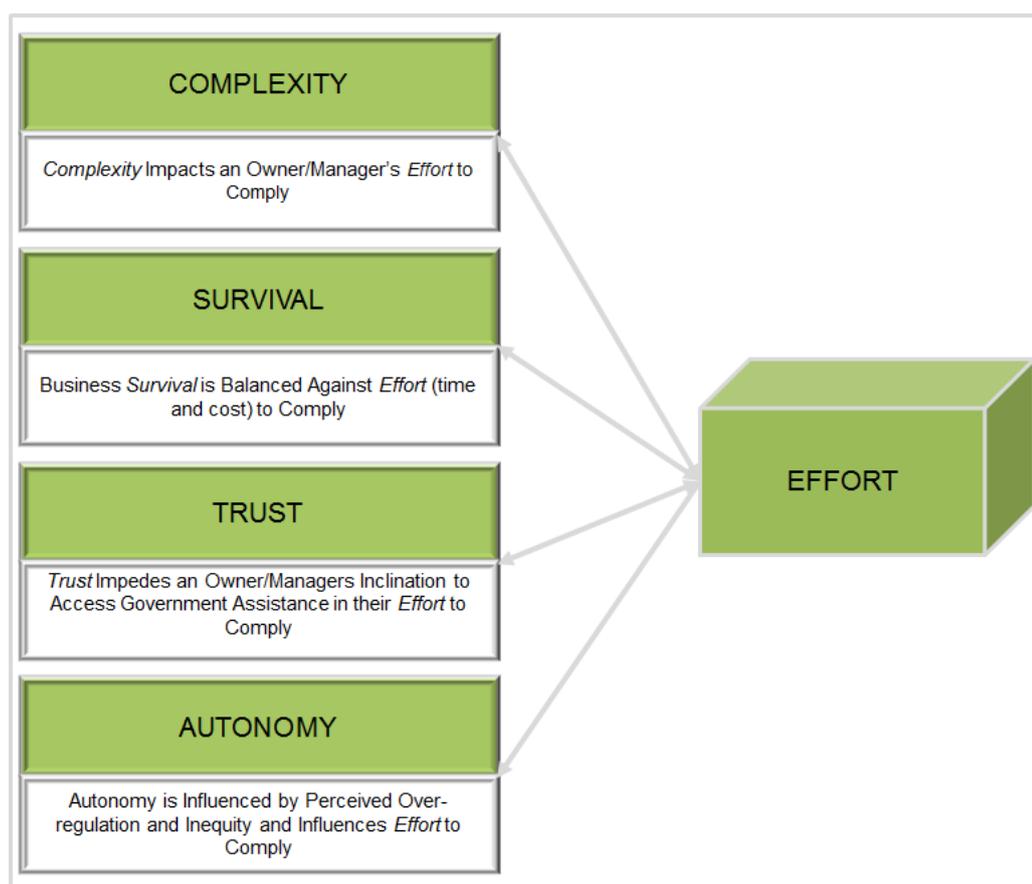


Figure 4-11: Potential Causal Relationships between Superordinate Themes

5 FINDINGS

5.1 Introduction

In this Chapter, the research findings resulting from the data collection and data analysis stages of the research are provided. The themes and superordinate themes that emerged from the experiences and observations shared by Stakeholder and SME (small and medium enterprise) owner/manager participants are presented.

This exploratory research sought to determine how SME owner/managers in Western Australia (WA) navigate their employment-related legislative obligations. This inquiry included their knowledge and awareness of legislative obligations and their willingness to comply. The research also explored SME owner/manager compliance strategies and their perceived cost of compliance. Finally, the research examined SME owner/manager awareness of supporting resources and the extent to which these resources are used.

The research questions that underpinned this project were:

1. What advantages and challenges do SME owner/managers perceive in meeting their employment-related legislative obligations?
2. What actions are taken by SMEs to meet employment-related legislative obligations and what is their awareness and use of the support strategies available to them. Also, what costs do they associate with compliance?
3. What additional support services do SMEs want in order to support their compliance with employment-related legislative obligations?

The research was conducted in two phases. Firstly, semi-structured interviews with Stakeholders (Federal and State Government agencies, Unions and Employer Associations) were undertaken to provide insight into Stakeholders' perceptions of SME challenges and opportunities to comply with employment-related legislation. The second phase was the main data collection and this involved semi-structured interviews with SME owner/managers. Forty-one owner/managers and nine Stakeholders participated in this research.

In the course of the semi-structured interviews, participants communicated their perceptions and experiences when dealing with employment-related legislative obligations. Participants were also asked to describe the types of resources that could provide additional employment-related legislative compliance support. As a result, the findings include recommendations that identify opportunities for Stakeholders (Government, Unions and Employer Bodies) to expand support for SMEs in order to promote success in their understanding of, and compliance with employment legislation.

5.2 Research Participants

Stakeholder participants included four Government agencies involved in providing employment-related legislative assistance to SME owner/managers, two Union State secretaries and three Employer Associations. Of the three Employer Associations, one was an industry association, one a not for profit member based consulting organisation, and the

other was a small business representative body. Owner/manager participants comprised six from the Resource Sector, 10 Hospitality providers, and 25 Retail suppliers of products and/or services.

Twelve of the total number of owner/manager participants had been in business between one and five years; however, the majority of owner/managers had over ten years' experience running their own business. Eight owner/managers employed between one and five employees and only nine were medium businesses (Australian Bureau of Statistics 2016a). Seventy-five per cent of SMEs were proprietary limited companies coming under the Federal jurisdiction, and the remainder were State employers with businesses formed as sole traders, trusts or partnerships.

5.3 Superordinate Themes

The data were analysed in relation to each research question. Further consolidation occurred and meaning was grounded in five superordinate themes (Figure 5-1).

1. *Effort*
2. *Complexity*
3. *Survival*
4. *Trust*
5. *Autonomy*

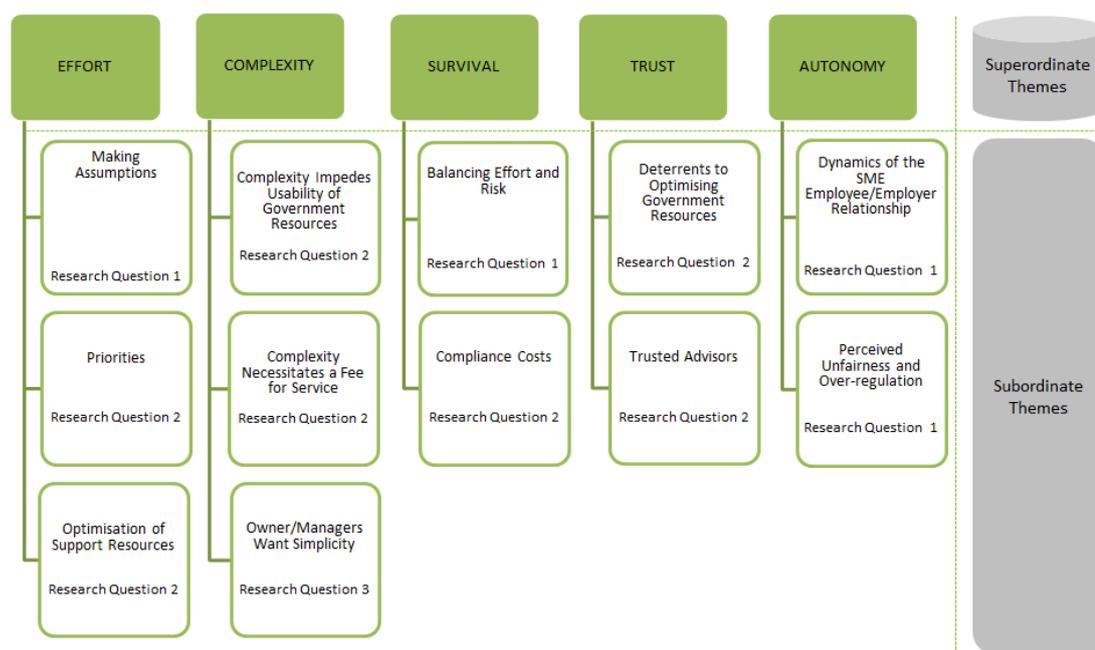


Figure 5-1: Superordinate Theme to Theme Relationship

The superordinate themes are not independent and interrelationships exist between themes. Semi-structured interviews provided flexibility and flow, and participants often addressed multiple matters when answering questions that were framed on a specific research question. Nonetheless, the data brought thick descriptions, and emergent

superordinate themes provided a logical and coherent representation of shared meaning within participants' responses.

5.4 Finding: *Effort*

5.4.1 Owner/Manager Participants

Effort refers to the level of effort SME owner/managers invest to meet their employment-related legislative obligations. Owner/managers who take proactive steps to comply are less likely to make assumptions and can benefit from support resources. The priority owner/managers give to meeting employment-related legislative obligations also influences the steps they take to research, interpret and apply these obligations (Figure 5-2).

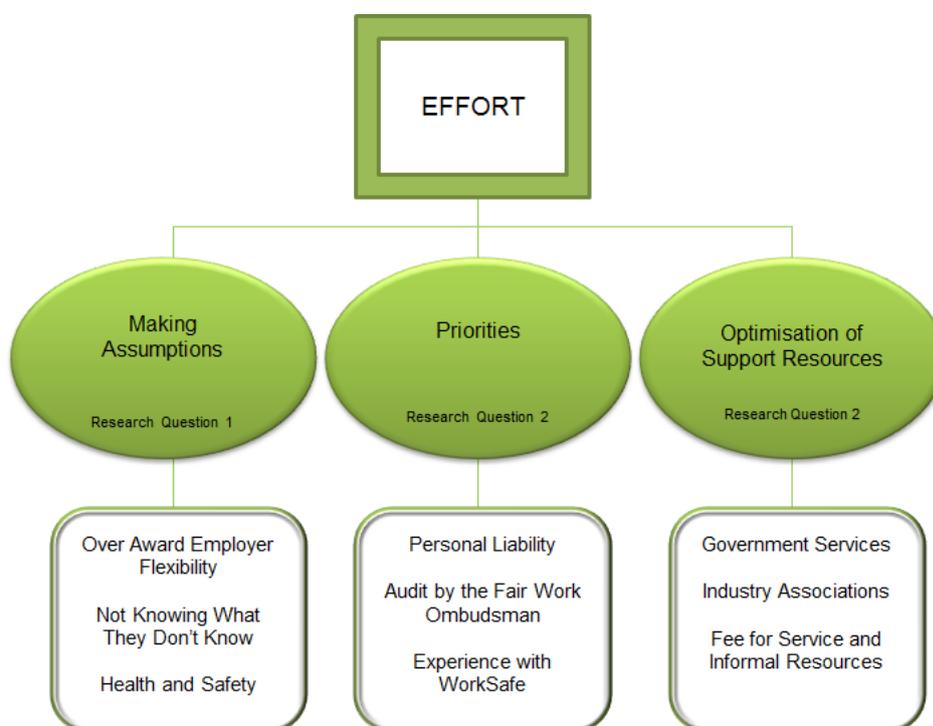


Figure 5-2: *Effort*

A balanced view requires recognition that employment-related legislation is complex, and capability to comply was not equal across all participants. Some owner/managers came from backgrounds where online research and networking was commonplace; whereas others had limited experience outside of their own small or medium business. Additionally, while some participants reported that sourcing information and applying their employment-related legislative obligations was reasonably straightforward, for the most part participants found employment legislation challenging.

Participants who indicated that they did not have the ability to research, interpret and apply employment-related legislation effectively were aware that they did have strategies available to them to facilitate their doing so. These strategies generally included: (a) additional time to invest in accessing no cost Government resources to learn and distil

required information; (b) accessing fee-for-service experts; or, (c) accessing family members, friends, accountants, and their network in general.

5.4.1.1 Subordinate Theme: *Making Assumptions*

In this Section the assumptions and presumptions made by owner/managers in meeting their employment-related legislative obligations are discussed. Three primary areas of dialogue led to a finding that many employment-related obligations are ‘assumed’ and these are:

1. If I pay over the award, I have nothing to worry about...
2. I heard it somewhere; therefore, this is what I do...
3. Health and safety is up to the employee and really what’s the worst that can happen...?

Participants talked with varying levels of confidence about how they met their employment-related legislative obligations. In some instances, the information they provided included assumptions that were technically incorrect. However, when asked to recall how they had gained those assumptions, participants were generally unable to recall the source of the information.

5.4.1.1.1 *Over Award Employer Flexibility*

For the most part, participants reported that they paid above the award rate of pay. With that said, many Federal employers referred to applying State awards and accessing Wageline for award updates and pay rates. Wageline is a service provided by the WA Department of Commerce and only provides information relevant to State employers. Therefore, the assumption by Federal employer participants that they were paying over the award rate, may or may not have been accurate.

Participants who reported paying above the award rate of pay made a number of assumptions with regard to flexibility of this award payment. When asked to describe the steps taken to meet their compliance obligations under the modern award, responses from participants included.

“We pay people so far out in front of any award payment that it is sort of a non - issue.” (RS3)

“I hadn’t really looked at it for 10 years because our minimum wage pay is \$20 but then we pay bonuses on top of that, so everyone’s well above the awards anyway. Technically don’t have to pay them overtime but I do.” (R5)

Another participant put forward that an over-award payment provides a buffer that obviates the need to be consistently vigilant in checking the obligations. While there is no intent to deceive employees or avoid obligations, the lack of *effort* reflected in the above comments can have an interim negative impact on employees.

“So typically, you know, I pay slightly above the award so if the award goes up it’s not a huge issue but that’s something that, you know, occasionally I go through and check, you know, it’s been a while since I checked that award rate and there was

one where I was under paying someone by 2c an hour. So, you know, I back paid them and I adjusted it and I said, 'I'm very sorry, you know, I didn't realise the rate had changed'." (R17)

For the most part, participants paying over the award rate had formed an opinion that additional rates such as overtime and shift penalties were no longer necessary. When asked if they had entered into an agreement with their employees to offset the over-award payment against the need to pay overtime, only one participant had taken this step.

Other participants were unaware that employees were required to agree to an offset arrangement and that the terms needed to be clearly documented and signed by both parties. Generally participants shared a common view that an over-award rate of pay provided flexibility across matters such as obviating the need for overtime payments, accruing additional annual leave in lieu of payment, avoiding shift penalties, and working additional hours without payment, *"because they're on a salary."* (R3).

Others described a 'give and take' approach with their employees and considered that they could apply their own 'better off overall test' (BOOT) over a 12 month period. One owner/manager explained that they were able to track overtime worked at 'normal' rates and then increase the base rate of pay at a later stage if they needed to 'catch up'.

"The Ombudsman will look at, generally, a 12 month period; over that 12 month period, if you've been paid fairly. Particularly with full-time staff. So full-time staff, I might not pay them the same amount by the hour, but I would have to pay over the award if I get to this particular stage." (H6)

The notion of an over-award payment being offset against overtime was a regular supposition; although, without any evident level of understanding on the part of the owner/manager. When asked, participants shared that they had assumed they were able to apply flexibility if they paid an over-award rate of pay; however, most were unaware of the steps required to achieve award flexibility.

In some cases, participants were unsure of the award relevant to their employees or where they could source a copy of the award. According to many owner/manager participants, they knew how to find out when pay rates changed; but, their enquiries rarely extended to other conditions of the award.

5.4.1.1.2 Not Knowing What They Don't Know

Participants were asked to describe their understanding and interpretation of various aspects of their employment-related legislative obligations. In addition to answering a number of specific questions on topics such as unfair dismissal, discrimination, health and safety, and award interpretation, owner/managers also shared stories of their experiences in managing employees. In general participants had only a cursory understanding of their obligations and the words, 'common sense' were often used. Paying the correct rate of pay, superannuation and leave entitlements were the most common areas of understanding; however, the detail of these obligations did not appear to be well understood.

Some participants were unaware that age and family responsibilities are protected attributes from an anti-discrimination perspective. Most participants were aware of gender, race and religion and referred to this knowledge as 'common sense'. When describing the recruitment of an office manager, one participant described a call with an unsuccessful applicant.

"So I just spoke to an applicant last night who didn't get the job and I had told her that, you know, she was second and the reason the other person got the job in front of her was – well, the first thing I said was she's a little bit older and she's looking for a longer term position. That's not discriminatory?" (R8)

This participant was unaware that he was unable to discriminate on the basis of age and held a view that he was just being open and honest. Further, he went on to say that he *"wiped eight people from an interview because of family responsibilities"*. The context for excluding these applicants was business survival and continuity *"because everyone wants school holidays off"*.

There also seemed to be a lack of understanding in relation to parental leave. Some participants were unaware of an employee's 'right to request' flexibility when returning from parental leave and others were uninformed of an employee's right to return to their original position in the organisation. When asked to describe how they might respond to an employee requesting a return from parental leave on a part-time basis (if originally a full-time employee), participants were generally unaware that an employee could make such a request. As stated by one participant, *"I would just say 'the previous role that you were engaged in was full-time and that's the capacity we need fulfilled.'" (R8).*

Responses by participants reflected confusion between Federal and State jurisdictions, with participants referring to State awards and modern awards interchangeably. Many referenced both the WA Department of Commerce (State jurisdiction) and the Fair Work Ombudsman (FWO) (Federal jurisdiction) and talked about using both Government agencies from time to time. In a number of cases, participants said they would select one Government agency over the other based on the quality of their templates or their web site navigation. Further, a number of participants were uncertain if they were Federal or State employers.

While these participants lacked clarity on their jurisdictional coverage, several participants had no awareness of the WA Department of Commerce or the FWO; nor had they heard of WorkSafe WA. In asking where they go for assistance in meeting their employment-related legislative obligations some participants confirmed that they take no action at all, some said that they had forgotten where they go for assistance, and still others said that they only use the Australian Taxation Office website when determining what to pay an employee.

"I think I'd wing it. Yeah, I haven't read anything or bought any information on that topic. So I guess I just do what I think is right." (R4)

"I know you need to keep a record of their PAYG summary that they fill out, their tax file declaration, I know we have to keep a record of that, a record of them giving us authority to pay super. I know that stuff." (R1)

Two medium business participants, who had been in business for nearly 15 years, commented that they made all employment-related legislative decisions for their organisations. These decisions included employee wages, hiring and firing, health and safety, and policy making. Yet, when responding to interview questions that sought to establish understanding on a range of obligations, neither participant was aware of the National Employment Standards (NES) or other basic obligations under the *Fair Work Act 2009* (Cth) (FWA). These participants employed payroll personnel as well as health and safety advisors; albeit at a relatively junior level. They also expressed a view that they were personally better placed to make the people-related decisions with regard to meeting their employment-related legislative obligations. When asked, both participants said that they had been in business for a long time and there was little that they did not know.

"It's probably me and the other main shareholder or business owner, Jo. So the two of us are – basically, we determine. The payroll girl's pretty green to all that sort of side, and so we just go – so she'll do the paperwork." (R5)

"I know most of the things. Myself personally." (RS6)

Participants who were not apparently proactive in finding out what they needed to do in order to meet employment-related legislative obligations, either applied their own rules based on what they thought should happen or acknowledged that they did not know 'rules' even existed. Basic knowledge for these participants existed around pay and conditions of service; however, little understanding extended to adverse action, discrimination, award flexibility, and unfair dismissal.

5.4.1.1.3 Health and Safety

With the exception of participants from the Resource Sector, health and safety knowledge was limited. Health and safety obligations were considered 'common sense' and often considered an employee's responsibility.

When asked about steps taken to keep their employees safe and comply with the legislation, participants' responses were particularly polarised. While a number of participants were reportedly diligent and took significant steps to comply, around one third of participants were unaware or had only a rudimentary understanding of their obligations. Of this group, some had taken 'common sense' steps to keep their employees safe, whereas others considered that the obligation rested with the employee. In a number of cases:

"Apart from hot wax and getting electrocuted, it's pretty basic stuff in here." (R25)

"There would be an induction with the driver in the sense of, make sure you stick to speed limits, you know, you're driving in and out of driveways, be aware that there's children or whatever." (R8)

“In the kitchen, health and safety, yes, but at worst they're going to cut themselves and get a few stitches.” (H1)

“If an employee pours hot oil onto a burner and it blows up in their face – I mean, we can't predict you being an idiot.” (H6)

In contrast, other participants described the significance of their *efforts* to both understand and comply with their health and safety obligations. Participants from the Resource Sector were typically consistent in applying rigour to meet their obligations under the legislation. Owner/managers from mineral exploration companies talked about their genuine concern for employees and always keeping them safe. Many participants had worked for larger Resource companies and experienced workplace accidents that led to permanent disability or death.

Participants from organisations that provide sub-contracting services to the Resource Sector also described their investment in health and safety initiatives. Both groups of participants indicated that they had always been diligent with health and safety compliance but were obligated to increase their levels of compliance as part of contractual commitments with organisations such as BHP and Rio Tinto. All owner/managers in the Resource Sector employed a health and safety advisor and engaged third parties to conduct independent audits of their health and safety policies.

While the *effort* to comply with health and safety obligations is perhaps understandable in the Resource Sector, the Hospitality Sector is not without exposure to hazards. Some participants underestimated the dangers in a commercial kitchen while others acknowledged the exposure to risk and discussed their proactive engagement with WorkSafe WA to provide a safe working environment. One participant described a serious fire on their premises and the impact that had on their subsequent *efforts* to comply:

“One of the reasons why we're modifying the kitchen is we've got underway, huge, huge hazard in the kitchen for storage, for lifting. So it's training, it's awareness, it's having all the safety equipment that we can have in place. We had a fire here last year. It was the chip fryer that caught fire that was on. Yep. WorkSafe came down and investigated and also the insurances all investigated.” (H9)

The size or the tenure of the business did not appear to determine factors as to whether or not an owner/manager was diligent in researching their health and safety obligations. Health and safety diligence was grounded in a number of factors and these included: perceived degree of risk, prior exposure to hazards, and a genuine desire to keep employees safe.

5.4.1.2 Subordinate Theme: *Priorities*

Analysis of the data further identified a relationship between *effort* and the priority an owner/manager places on employment-related legislative compliance. Predominant factors influencing owner/managers' perspective of compliance as a priority included:

1. Personal liability at Board level;
2. Prior audits by the FWO;

3. Experience with WorkSafe WA.

A number of participants expressed genuine intent to do the right thing by their employees and this included researching and applying their employment-related legislative obligations correctly. Of this number, one group of participants considers 'doing the right thing' to be based on their own set of rules, and another group perceives that they achieve compliance by applying the legislation. Further discussion on this distinction in the context of the employer/ employee relationship is presented in Section 0.

5.4.1.2.1 Personal Liability

When discussing compliance with health and safety legislation, SME owner/managers whose structure includes a Board of directors and/or a company secretary talked about their obligations to keep the company safe and avoid personal liability. While these obligations were particularly notable amongst Resource Sector participants, they were also discussed in Retail interviews. One Retail participant with seven employees was formed as a trust and had a Board of directors. This participant was responsible for the management of the business and worked closely with the Board. When asked about the Board's involvement in the business, the participant expressed:

"Our Board is really, really good at – because our Board of directors, their job is to make sure we're legally compliant so they're really good at reminding me to check up on these kind of things." (R1)

Personal liability was a concern for Resource Sector participants from whom there was recognition that liability extended across all aspects of employment-related legislative compliance. Generally these participants acknowledged that personal liability drove their *efforts* to learn and comply with employment-related legislative obligations; however, a desire to do the right thing also underpinned their *efforts*. One owner/manager from a mineral exploration business recognised the risk of personal liability and held a firm opinion that doing the right thing remained the impetus.

"Personal liability would be a concern. You don't want to have worked for 40 years to lose your house and potentially your family over something but again, I guess it comes back down to it doesn't stop you from doing or make you do the right thing. I think you do the right thing because it's the right thing to do." (RS2)

Another Resource Sector participant commented on personal liability as the registered manager for an exploration site. His company had eight employees so the exploration work relied on workers employed by sub-contractor firms. This participant referred to the level of due diligence levied on their sub-contractors and spoke of his *efforts* to only contract with businesses that comply with the legislation, instead of trying to cut costs by engaging less conscientious providers. In the latter case, the personal liability cost was just too high.

"That is a very significant factor when you're engaging these guys. Would you pay more? Absolutely, for someone you think, you know what, these guys, I'm not going to get a phone call in the middle of the night telling me someone has just lost an arm." (RS3)

Personal responsibility and liability was often referred to by participants in the context of health and safety. While there was general understanding that fines apply for non-compliance under the *Occupational Safety and Health Act 1984* (WA), there was limited awareness that breaches of the FWA can result in maximum penalties of \$54,000 for a corporation and \$10,800 for an individual. Although participants frequently stated that penalties did not drive their overall compliance behaviour either way, most indicated that a fine of \$10,000 or more would have a material impact on the *survival* of their business.

5.4.1.2.2 Audits by the Fair Work Ombudsman

When asked about their awareness of the existence and function of the Office of the FWO, more than half the participants had no knowledge of this Government agency. Those who were unaware expressed views that ranged from “*come and audit me – that way I will know how I am doing*”, “*I have nothing to worry about – but will it take any of my time*” and “*I hope they never find me*”. Those who were aware of the FWO also expressed a range of views from “*nothing to worry about*”, “*fear these people*” and “*I have been audited and I have changed my ways*”.

Participants who had been audited by the FWO talked about changes they subsequently made to their compliance *efforts* and steps they now take to meet their obligations. Interestingly, participants who had undergone an initial audit experienced multiple follow up audits. Audits are generally undertaken remotely and through the exchange of information electronically. One restaurant owner talked about regular audits by the FWO and explained that he now uses the services of an employment lawyer in addition to engaging in-house assistance to manage employment-related legislative compliance. Reflecting on how his involvement with the FWO has influenced his *efforts* to comply he explained, “I just think the Fair Work Ombudsman and the way that they operate influences everything that we do.” (H6).

Another participant talked about how she felt the first time she was audited. She talked about the stress and anxiety involved in preparing information for audit and then worrying about the accuracy of her employee records. The participant also referred to remedial actions that she put in place:

“I had an accounts girl—she was slack in different areas. But after getting audited, I actually sacked my accounts girl and then I got another accounts girl and got my HR girl to work for me.” (R24)

The same participant also commented on the benefit of these remedial actions when contacted by the FWO for a follow up audit. She explained that she felt much more confident, was still concerned with the inconvenience, but was now able to delegate to her HR consultant:

“I thought shit, that’s all I need. So she said just pick seven random staff members. Then I thought I’m too busy with that. So it was great. I just said Janet; you need to deal with this.” (R24)

Other participants talked about the ease with which they had navigated an audit by the FWO and all confirmed that the potential for further audits keeps employment-related legislative compliance as a business priority.

5.4.1.2.3 *Experience with WorkSafe*

In general, participants who had prior experience with WorkSafe WA talked more positively about the role of this Government agency than those who had limited awareness of WorkSafe WA. Yet again, those participants who had either been audited or who had been visited by WorkSafe WA as the result of a workplace accident or injury, reported an increased and sustained *effort* with the health and safety legislation.

Participants who had engaged with WorkSafe WA were generally positive and talked about additional steps they had taken to find out what they needed to do in order to meet their obligations. One participant referred to taking things further than just remedying the issues identified by WorkSafe WA and talked about investing in an ongoing commitment to health and safety compliance. This was not uncommon and other participants discussed taking proactive steps to truly embed good health and safety procedures and practices into their business.

“WorkSafe did a free audit a few years ago and the guy came in, the consultant from WorkSafe and he actually ended up – we spent about \$7,000 or \$8,000 with him in the end because he did a whole lot of procedures and so on.” (R5)

“WorkSafe targeted our industry a little while ago and served up all the Improvement Notices. In the past we would have done that and then nothing more, but we used that to actually put Tim through the training. He fixed all that and then kept going, so it’s just a work in progress.” (R9)

Participants who had no prior knowledge of WorkSafe WA wanted things to stay that way with comments such as, *“No, and I don’t want a visit from WorkSafe”* (R6). Of these participants, some recognised the benefit of an opportunity to have a health check of their business without the need to engage a fee-for-service consultant:

“That is exactly what we need and I have been struggling to know how to get there.” (R10)

Health and safety is doubtless a more tactile area of employment-related legislative compliance and a prior event such as a fire in a kitchen (as experienced by one participant), increases the priority in which employment-related legislative obligations are held to influence an owner/manager’s *effort*. While distrust of WorkSafe WA will be discussed later in this Chapter, there is evidence from this research that the involvement of that Government agency with SMEs can have a positive impact on improving *efforts* to comply with employment-related legislative obligations.

5.4.1.3 Subordinate Theme: *Optimisation of Support Resources*

When asking participants about their awareness of resources available to support employment-related legislative compliance, responses spanned a wide continuum. These

ranged from participants who were unaware of any of the resources read to them during the interview, to those who had heard of some and had a vague understanding of their function, through to owner/managers who were confident and regular users of the support resources.

Participants were asked to comment on a range of support resources read out to them during the interview. These were made up of Government agencies (FWO, WA Department of Commerce/Wageline, Small Business Development Corporation (SBDC) and WorkSafe WA), and Employer Associations (Chamber of Commerce and Industry WA (CCIWA) and the Council of Small Business Australia (COSBOA)). In addition, participants were asked if they were part of an industry association specific to their business sector and whether or not employment-related legislative services were available through that association. Owner/managers were also asked to describe other support resources they accessed that were outside of the resources prompted by the researcher.

5.4.1.3.1 Government Services

When asked about their knowledge of the FWO, one participant indicated that he was not aware of this Government agency. Another participant was uncertain if she knew of the FWO but then recalled that she may have previously visited the website.

“That’s the one I think I went onto to look for everything and after about an hour and a bad headache there was no way I was revisiting.” (R2)

Even participants who had engaged with Government agencies were vague about who they had contacted for support and assistance and it was not uncommon for participants to respond with words to the effect of, *“I just get the emails from whoever they are. What’s the State one?” (H11)*

There was mixed awareness of the SBDC. Some participants thought that the name sounded familiar, and others recalled attending courses run by the SBDC on topics unrelated to employment-related legislation. Further, a number of participants found services run by the SBDC to be invaluable when they were starting their own business:

“I said to my dad ‘I want to start my own business so he just sent me off to the Small Business Development Corporation to get information and read up.” (R9)

“I went to the Small Business Development Corporation when we were looking at opening the business.” (R22)

However, when asked about the information they either sought or received pertaining to employment-related legislative compliance from the SBDC, participants said the agency’s services only extended to business planning and financial management. In relation to employment-related legislative compliance one participant said, *“I would never have thought to ring them.” (R25).*

Wageline, as the division of the WA Department of Commerce that provides employment-related legislative assistance to State employers, was referred to by a number of

participants. Of these participants, half were Federal employers whose source of support is the FWO and not Wageline.

In considering owner/managers' efforts to comply with employment-related legislative obligations using 'no cost' Government resources, there was a low level of awareness. When asked about knowledge and use of Government resources, one participant said, "how would I know?" and another blamed the Government for his lack of knowledge, "that's the Government's fault really; they're not proactive enough in communicating". A few participants were proactive in accessing Government services and used phrases such as, "they're easy to deal with" or "I'd give them a ring" to describe their interactions with agencies.

5.4.1.3.2 Industry Associations

Industry associations are organisations that provide a broad range of services to employers in their industry sector. The industry associations discussed in this research are the:

1. Australian Hotels Association
2. Hair and Beauty Association
3. Australian Hairdressing Council
4. Real Estate Institute of WA
5. Tree Guild of WA
6. Optometrist Association
7. Physiotherapy Business Association
8. Pharmacy Guild
9. Restaurant and Caterers Association

Knowledge of industry associations and the services and information they can provide was inconsistent across participants. Some participants talked at length about the employment-related services they access from their industry association. Other participants from the same industry sector had no knowledge of the industry association or the available services.

The services available from industry associations included newsletters, employment-related legislative alerts, and consulting resources to assist with matters such as responding to unfair dismissal claims. Some participants recalled receiving advice from their industry association when the FWA came into effect and others reported being alerted to changes to wage rates and superannuation contribution percentages.

Industry associations provide services beyond employment-related legislative compliance and their focus is limited to the industry they represent. Participants who reported accessing employment-related legislative assistance from their industry associations considered these services to be useful and inexpensive.

"I confirm wage rates with the Pharmacy Guild. There's an IR person at the guild so normally you can speak to her on demand but certainly within a matter of days you'll get an answer." (R17)

“The Australian Hotels Association assisted with an up-to-date template so any changes that are made, they then send the template through.” (H5)

5.4.1.3.3 Fee-for-Service and Informal Resources

When participants were asked if they knew of the CCIWA, there were varied responses. Around one third of participants had little or no awareness of CCIWA; however, those who knew of the CCIWA and understood the purpose of this fee-for-service employer body were polarised. Various participant SMEs considered that the CCIWA was only focused on large business and described the CCIWA as having *“lost relevance”*. Others described their perception of the CCIWA more emotively and used phrases such as, *“never liked really CCI”*, *“when things get tough they're no use”*, and *“on principle, don't associate with the Chamber of Commerce”*. However, other participants talked about the value of their membership of the CCIWA and described their services as an efficient way of meeting their employment-related legislative obligations.

Participants were asked to describe where else they would go for support to meet their employment-related legislative obligations and their responses tended to sit in the following categories:

a) Employment Lawyers

The majority of participants who described accessing employment lawyers were medium-sized business owner/managers or participants from the Resource Sector. Often the first response by a Resource Sector participant was a call to an employment lawyer. Many Resource Sector participants previously worked for large companies who rely on employment lawyers to navigate matters relating to bargaining and Union negotiation. As such, they were following the protocols that had kept them safe in the past.

b) Industrial Relations Consultants

Only one participant reported using a medium sized industrial relations consulting firm that could be considered as a competitor to the CCIWA. Others used individual consultants. Some participants formed direct relationships with an individual consultant and others had collaborated as a group to source and access these expert services. One participant described how she had achieved an economical way of accessing expertise by collaborating with a group of colleagues.

“I have about seven really good girlfriends who own hairdressing salons. We figured that we just didn't have the time to look after these things that aren't our expertise. So we decided to find someone and use her across all of our salons.” (R24)

Another participant joined a group of 16 other physiotherapy practices who had engaged an industrial relations consultant to assist them in their transition to the FWA. He talked about the *complexity* involved in implementing the provisions of the FWA and how it would not have been financially viable for him to engage these types of expert services on his own.

c) In-house Expertise

A limited number of participants employed in-house expertise of some form or another. One medium sized business with just under a hundred employees recently employed an HR manager, and the decision to do so was the result of a difficult episode with an employee. However, having employed the HR manager, the participant likened the experience to *“opening a Pandora’s Box that was the feeling. Ignorance is bliss a little bit.”* (R9).

Participants in the Resource Sector consistently employed health and safety advisors, and smaller businesses relied on a combination of accounts clerks, bookkeepers and payroll officers to manage the award compliance aspects of employment-related legislative obligations. In some cases there appeared to be overreliance on the knowledge and experience of in-house support personnel to manage all aspects of a participant’s employment-related legislative obligations.

d) Trusted Advisors

Informal sources such as family members, friends, accountants, and their network in general were also described as sources of support and assistance. Colleagues who had previously worked in a large business were also considered a source of knowledge. Participants stated that they accessed this broader network on a regular basis and phrases such as *“my husband has been absolutely awesome”* and *“Joe’s very, like, he likes to get it right as he worked at X, Y, Z large business”* were common.

In examining non-Government support services accessed by participants, some considerations come to mind. One is the level of *effort*. While accessing an informal network may be ‘exercising *effort*’, it is arguable that the *effort* is minimal unless due diligence is applied. Accessing paid resources is also recognition of *effort*; however, the ability to pay is not equal across all participants. Regardless, some participants collaborated with others to create their own economies of scale and reduced the cost of accessing employment-related legislative expertise.

5.4.2 Stakeholder Participants

Stakeholder participants reported that *effort* to comply was mixed amongst SMEs. Union participants described owner/managers as either knowing the *“basics”* or thinking they are doing the right thing. One Union participant reported that owner/managers do not like to get too involved in the detail and a level of disinterest exists:

“My wife’s family runs a small business and once upon a time they said to me, ‘Oh, can you tell us what the rate of pay is, we’re going to employ a such and such?’ I said, “Yeah, sure.” So I said, ‘Well, it’s - the base rate of pay is this.’ I said, ‘But you need to know what the ordinary hours of work are so you can determine overtime and loadings.’ They said, ‘No, we don’t want to know any of that stuff. We just want to know the base rate of pay’.” (Union)

Government participants acknowledged the *complexity* of employment-related legislation but contended that owner/managers could make more *effort* to meet their obligations. These participants considered that owner/managers spanned a continuum from avoiding

compliance through to making every *effort* to comply. In the most part, Government participants stated only a minority of SMEs deliberately set out to flout their employment-related obligations.

“There is a group that deliberately does not engage with employment laws or knowledge or gaining awareness of employment laws, usually for one of two motivations from what I can see. It’s in their financial interest not to. They have no awareness because they hold the belief that as a proprietor of an enterprise they will not have to. And that’s about a five per cent.” (Government)

Employer Association participants considered that awareness and *effort* to comply with employment-related obligations was low amongst owner/managers and described “*vagueness*” and knowledge that dissipates once you “*scratch beneath the surface*”.

Stakeholder participants considered that owner/managers’ *efforts* to comply with employment-related legislation is influenced by external scrutiny and pecuniary penalties. Owner/managers were said to raise the priority of employment-related obligations if they are audited by a Government agency or if someone they know is audited.

“The more someone’s likely to be inspected, actually is a bit more of a motivation for them to comply as well.” (Union)

“They’re always saying that they don’t have time until something happens.” (Government)

“Anecdotally I would say there’s been a growing awareness that small to medium sized enterprises need to engage with and get it right. I think the Fair Work Ombudsman has had an involvement in that space. Media around consequences for small to medium enterprises and large enterprises that don’t take the time to get their workplace relations obligations correct.” [G]

Stakeholders talked about Government resources that were available to assist owner/managers to meet their employment-related legislative obligations. Union and Employer Association Stakeholders were consistently critical of Government websites and Government hotlines. These participants expressed a view that Government resources were not “*fit for purpose*” and their usability was unrelated to the *effort* expended by owner/ managers.

“There’s this belief that they can’t ring up the Government who, after all, are supposed to be administering this thing and say, ‘Give me the rates of pay that apply for me, on a sheet of paper, so that I can give it to my husband or wife or my payroll person and say, there’s the rates of pay, pay them.’ And just getting something as simple as that has been almost impossible.” (Union)

“If you were an employee or you were, you know, Mary Smith who runs a small florist shop and you went on there to try and work out what to pay your shop assistant, you would be thinking, ‘I don’t know the answer to any of these questions that they’re asking me.’ “Because you’ve got to know a whole bunch of stuff before you can use the thing properly.” (Union)

Most Government Stakeholders recognised the *complexity* of the legislation and acknowledged that providing employment-related support resources is challenging. These participants perceived that owner/managers would have difficulty using Government employment-related resources.

“You will sometimes get a call, ‘I’ve been on the Fair Work website but I can’t find information, can you help me find it?’ ‘So, you know, it’s not that it’s not there, it’s just that they’re having difficulty getting it.” (Government)

“Now, I certainly wouldn’t come out and say that there’s a silver bullet. It’s better now than it has been in the past but I think that there’s a long way to go to try and make it more straight forward for particularly small to medium enterprises.” (Government)

A minority of Government Stakeholder participants considered owner/managers could be more successful in using Government support resources if they assigned a higher priority to employment-related legislative compliance and also spent more time on compliance. At the same time these participants stated that SMEs were focused on *survival* and would balance the time spent on compliance with ongoing viability.

Stakeholder commentary on *effort* to comply is consistent with views expressed by owner/manager participants. From the information shared by owner/managers, many participants ‘assume’ their employment-related legislative obligations. Both Stakeholder and owner/manager participants report that an audit by a Government agency will increase the priority applied to employment-related legislative compliance and will have a direct impact on *effort* to comply. Many Stakeholder participants consider that increased compliance *efforts* will not improve the successful use of Government resources. Nonetheless some owner/manager participants reported that Government resources are useful and easy to use.

5.4.3 Summary: *Effort*

Without a compelling event to increase the priority of employment-related legislative compliance, SMEs may fall into one of three suppositions:

1. I know I need to comply with something; however, I will wait until I am found to be non-compliant.
2. I know I need to comply with something; however, I don’t know where to start.
3. I know I need to comply with something and I will go online and call someone so that I know what I need to do

The themes and superordinate themes that emerged from this research interrelate and it is recognised that other factors contribute to the degree of fit between these three suppositions and an owner/manager’s *effort* (Figure 5-3).

While accepting and acknowledging that the relationships between the five superordinate themes cross at many points; this Section focused on the predominate findings relating to

effort. Other findings crossing this superordinate theme are discussed in Sections 5.5 to 5.8 of this Chapter.



Figure 5-3: *Effort* – Potential Causal Relationship

5.5 Finding: *Complexity*

5.5.1 Owner/Manager Participants

Synthesis of responses to interview questions by participants resulted in a finding that *complexity* of employment-related legislation is at the foundation of many challenges experienced by SME owner/managers navigating their compliance obligations. The complexity of legislation was found to have a direct or indirect impact on owner/manager behaviours and opinions (Figure 5-4). Additionally, when participants were asked to describe the type of resources and support services that would ideally be available to assist with their employment-related legislative obligations, the central basis of their responses was grounded in the hope that these resources would be simple, lack *complexity* and tailored to the needs of SMEs.

Participants directly referred to the *complexity* of the legislation when describing their *efforts* to comply and also the perceived usefulness and quality (or otherwise) of Government resources. Indirectly, the existence and use of paid sources of expertise, whether through membership of industry associations, employment lawyers, the CCIWA or independent consultants, added to participants' perception that employment-related legislative compliance is complex. Those who elected to proceed without expert assistance either 'played it by ear' or accessed resources known to them, and these resources may or may not have expertise in employment legislation.

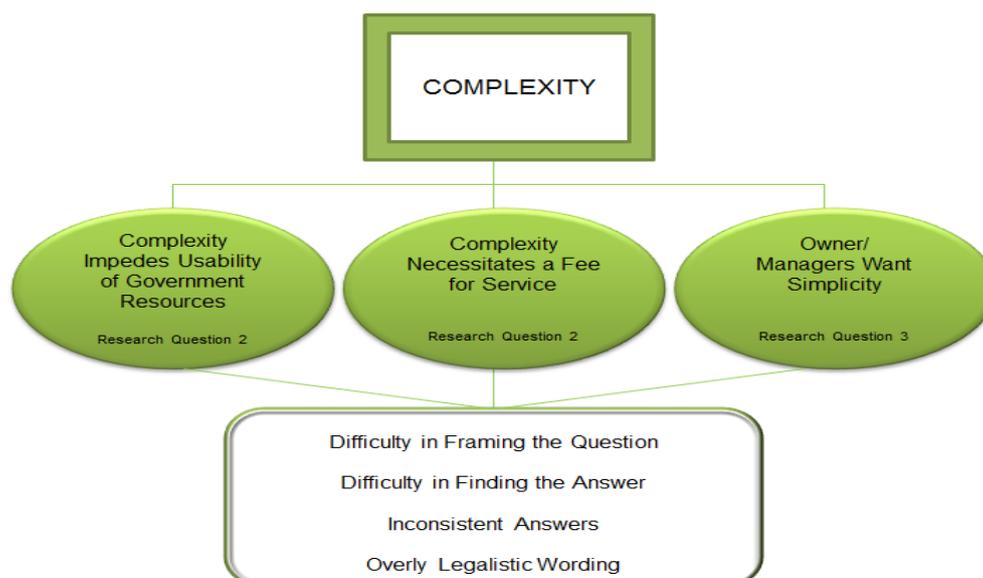


Figure 5-4: *Complexity*

5.5.1.1 Subordinate Theme: *Complexity Impedes Usability of Resources*

Analysis of the data found that not all participants were aware of Government agencies that provide support and resources to aid employment-related legislative compliance. Of the participants who were aware of Government support and resources, most described difficulties sourcing information successfully. These participants noted that there was a significant amount of employment-related legislative information available online; however, accessibility and *complexity* impeded optimisation. Participants expressed the following experiences and each is discussed in the following Sections of this Chapter:

1. How do I even ask the question if I don't know the question to ask?
2. I start to look then I get lost, confused and frustrated.
3. Everything is overly legalistic.
4. How do I know that I have been given the right information?

5.5.1.1.1 *Difficulty in Framing the Question*

Participants consistently reported difficulty articulating the question they needed to ask when engaging with Government agencies. An example of this came from a participant who characterised himself as someone who is confident in researching and finding information. Even when he found the correct website and the relevant topic, he did not always know what questions to ask. Another participant made this comment when talking about the FWO:

"I suspect if I type that in I'm going to get an answer I don't want which is a whole lot. "Have you done this? Have you done this? Have you done this?" Because it won't be simple." (RS3)

Most participants described negative experiences when seeking support and information from Government websites. Participants reported being asked a series of online questions and being unable to progress further if they could not answer the questions. Participants

commented that the information requested was of a technical nature and not something they would generally know.

Initially, these 'dead end' visits to Government websites prompted participants to call the associated hotline; however, many participants explained that this is something they have now given up on. Participants found the hotline required them to answer the same questions they had been unable to answer online. This led to frustration and reluctance to return to the Government agency. As one participant voiced, "*I find their website just as useful as having a conversation with them!*" (R10).

The FWO in particular has an unenviable task of having to synthesise and present thousands of pages of legislation into an online resource. In addition, the legislation is not linear. Rather, obligations, terms and conditions are interlinked and interdependent. An online resource cannot answer a question without first establishing baseline information such as the business composition (to establish Federal or State jurisdiction), employer industry (to determine the modern award) and the nature of the employment (casual, maximum term, or permanent). The same dilemma exists for the person occupying the Government hotline; they are unable to provide the correct advice without determining baseline information.

In an effort to distil the *complexity* of employment legislation into something that can be more easily used, Government agencies introduced a utility generally known as a 'wizard' to simplify finding information. At each juncture in the wizard, the employer is asked to select from a list of pre-populated answers and this obviates the need to answer a question with information the owner/manager may not have. However, as shared by one interviewee and supported by other participants, this genuine attempt to assist may add more confusion:

"Really hard, really confusing, like, Federal, State, you go on the websites and there's that modern award, not modern award, and then you're looking for your employment category, which is really specific. But people fit under this. Then you get two or three options that you think they could potentially fit...really confusing. It's a mess." (R1)

While Government agencies clearly acknowledge the need to support employers who either do not know the question to ask or are not sufficiently aware of the subtleties and terminology of the employment legislation, the *complexity* of the legislation does not assist in the building of an online service that can be all things to all people.

5.5.1.1.2 *Difficulty in Finding the Answer*

When asked about their experiences in engaging with Government agencies such as the WA Department of Commerce (Wageline) and the FWO to source employment-related legislative support, most participants referred to confusion, frustration and irritation.

Participants described spending hours on Government websites trying to find information without success. They talked about getting lost and also giving up. Participants talked about getting "*bad headaches*" and said "*no way I'm revisiting*".

The confusion between Federal and State jurisdiction was also a consistent source of exasperation.

“You can waste an awful lot of time trying to figure out grades and levels and then you’ll find that actually that’s State award and really it’s a Federal award so, hang on, I’ve just wasted the last hour and a half playing around with this so then I’ve got to go off somewhere else.” (R3)

The design of Government websites was reported as being confusing and difficult to navigate. Some preferred Wageline and others preferred the FWO. Concepts such as modern awards were not easily understood and finding out how to pay someone correctly was considered a difficult task. One participant talked about “*crippling penalties*” for not doing the right thing and described how he could not rely on Government resources to be assured that he was compliant. Participants talked about websites becoming more difficult to navigate over time and others referred to not being able to “*pigeonhole*” the correct modern award for their industry and found “*trawling*” through the website to be “*frustrating*”.

The concept of parental leave was reported by participants as daunting and confusing. Participants described what they understood to be their parental leave obligations and these assumptions were generally incorrect. Sourcing information on parental leave entitlements was challenging and participants found the information on the FWO website difficult to understand. An example of this difficulty is provided by a participant who sought to understand an employee’s eligibility for a further 12 months parental leave.

“You can’t find that on the website. Then you go – and I looked at maternity leave, I looked at leave, I looked at – so forget about all that. Find where an employee has to tell you when they’re going to come back to work. You can’t find it. You can’t find that.” (H6)

The words “*frustrating*” and “*confusing*” were repeated many times by the majority of participants who had used Government resources. While it is understood that these comments can bring into question the quality and usability of Government resources, the *complexity* of employment-related legislation may hinder the efforts of Government agencies to provide support resources that are ‘simple’ to understand.

The dilemma around developing transactional tools (the website) or services (the hotline) to dispense employment-related legislative information is not one that can be easily overcome. The legislation is broad, voluminous and intertwined across Federal and State jurisdictions.

5.5.1.1.3 Inconsistent Answers

Participants shared concerns about the consistency of advice they received from Government agencies when asking questions to support compliance with their employment-related obligations. In part, these concerns were communicated as ‘vagueness’ in the advice provided by Government agencies. Participants described coming away from conversations with Government hotline employees with their questions unanswered. In some cases answers were provided; however, these answers were not

definitive. One participant talked about “*no black or white, no direction in anything*” and another referred to “*vague advice*” on matters relating to leave entitlements.

Others talked about trying to source advice in writing from Government employees. One participant described being unable to get anything that a Government agency would, “*stand by and provide in writing*” while another said, “*they won’t commit to anything*”. In another case, a participant asked for a conversation he had had with a Government employee to be confirmed in writing. Instead, he was referred to the relevant section of the Government website. Unfortunately the participant had already spent considerable time on the website and it was this experience that had prompted him to call the hotline.

Possibly more frustration was communicated by participants when they talked about receiving inconsistent answers from Government agencies. For example, several participants referred to experiences when making follow up calls to Government agencies. The information received from the ‘second’ Government advisor was often contradictory to that provided by the ‘first’ advisor and participants were left wondering, “*so what’s right and what’s wrong?*” Some participants expressed a view that Government hotlines are resourced by junior employees. While conceding that they are doing the best that they can with their respective knowledge and experience, the ramifications of incorrect advice was said to be far reaching for owner/managers.

“Then it’s a problem because they’ve been wrong for 12 months. So that’s either accumulated a debt somewhere in unpaid leave or they’ve been paid too little or all of those sort of things.” (R15)

Not unlike the criticism of Government websites discussed in Section 5.5.1.2 of this Chapter, these findings pertaining to the ‘quality’ of Government employees could be taken at face value. However, the *complexity* of employment legislation does not always allow an answer that is ‘black or white’ or support specific advice without the need to shroud it in caveats. And yet at other times, it can be the ‘precision’ of employment-related legislation that creates a situation where the same question is asked twice yet different answers may apply. If the same question was not asked in exactly the same way on each occasion, the *complexity* of the employment-related legislation is such that two conflicting responses can be contemplated.

The reluctance of Government agencies to commit to a “*black and white*” response is understood as the legislation is complex. Nonetheless, participants talked about “*giving up*” and “*not wanting to endure*” a call to a Government agency.

5.5.1.1.4 Overly Legalistic Wording

There was a consensus that employment-related legislation and the resources created to support compliance were developed without regard for SMEs. Participants referred to the dissonance between what an owner/manager needs and anticipates when starting a new business and the reality of their compliance obligations generally. This was summed up by a participant as:

“People who are putting these policies in place need to actually road test them and work under them themselves. You just write a policy, off you go. Some other poor bugger has got to implement it.”

Participants shared a collective view of the “*thoughtlessness*” of the “*bureaucrats*” who legislate without regard for SMEs.

The wording of Government resources and support (including the drafting of the modern awards), was reported to be “*overly legalistic*”. In support of this, participants went as far as to contemplate that Government agencies had no interest in developing resources that were easy to understand. The sentiment was that Government agencies were in themselves an industry and simplicity would only undermine the need for their own existence:

“There are enormous vested interests in making sure that that doesn't become the case. The sort of interference that I'm sure these people would want to run once you've built up an enormous industry on making sure that it's not simple, by simplifying it you'll be having a go at their livelihoods.” (RS3)

More generally, participants shared a view that the employment legislation was developed in such a way that the ordinary person could not navigate the detail without substantive assistance. One participant talked about owner/managers' needing a “*law degree*” before they could conduct a job interview for fear of using language considered to be discriminatory. Others described “*immaterial*” rules and regulations that have no value while others labelled legislation “*impractical and obstructive*”.

Health and safety legislation was generally understood and appreciated, although some participants considered that the ‘harmonisation’ laws will put more pressure on SMEs. Additional responsibilities anticipated from the ‘harmonised’ health and safety legislation, included obligations that were perceived to be new and included actions that were “*over the top*”. Examples included a comment by one participant who referred to “*funny things*” in the legislation such as having to paint the door and walls in different colours in order to accommodate parties who are vision impaired.

5.5.1.2 Subordinate Theme: *Complexity Necessitates a Fee for Service*

Participants in this research agreed that they will not spend more money than they need to. Nonetheless, analysis provides that participants:

1. Either don't know what they don't know and have little interest in finding out; or,
2. Are committed to complying with their employment-related obligations and are able to navigate ‘free’ resources sufficiently well to comply ‘most of the time’, or,
3. Are committed to complying with their employment-related obligations, but were unable or unwilling to navigate ‘free’ resources and instead engaged fee-for-service expert resources.

As stated above, fee-for-service resources include industry associations, the CCIWA, independent consultants, employment lawyers and in-house specialist expertise. All of these resources cost money and many participants state they expend this money to meet

their employment-related obligations. The extent and regularity of the service accessed varies across participants, as does their impetus for accessing specialist expertise to assist compliance with employment-related legislative obligations. Most participants reported that they do not have the personal expertise, desire or time to meet their obligations unassisted. Additionally, a risk of pecuniary penalties, while not always the motivation, was acknowledged by participants.

“I would be anxious to operate in that environment without access to the appropriate levels of advice.” (R17)

Participants referred to entering into arrangements with independent consultants through paying an annual retainer for services such as award alerts and general information. These arrangements extended to additional services as and when required. The role of the independent consultant was generally to ‘check’ that things were being done correctly by way of interim reviews of awards, policies and procedures, as well as supporting more complex matters such as claims for unfair dismissal.

“When the modern award came around we got together a group of clinics and we employed an IR advisor sort of thing across our group so we met all the requirements of the modern award. So that's sort of how we initially made sure we were complying with things. I think it's changed a little bit again and we've kept a relationship with that person. So they email us if there's a change.” (R14)

Employment lawyers were also described as a source of assistance and participants who used them were mostly drawn from the Resource Sector and medium-sized business employers. Even when participants were generally confident in their skill set, they still expressed a need to validate their thinking:

“I tend to use my intuition, common sense and then do the research. If you get to the point where you don't know, you go to a lawyer.” (R7)

“I would probably call Wageline or Fair Work and I would possibly get a lawyer to make sure everything is right just in case.” (H11)

“So it was very much run it by our lawyer. Our payroll person obviously does know a fair bit about different laws.” (R9)

Memberships of industry associations were said to be very affordable but nonetheless a business expense. Participants who were members of their industry association described employment-related legislative support as one of the most compelling benefits of the membership. Members of the CCIWA considered the service to be “expensive” but described them as a “godsend” when difficult situations arise.

“I remember the MD being very happy with (dealing with an unfair dismissal) –that was the Chamber of Commerce.” (RS5)

The appointment of an in-house health and safety advisor is common amongst Resource Sector employers and also in medium-sized businesses. Participants from medium-sized businesses who had an in-house health and safety advisor employed between 35 and 95

employees and were evenly divided across the Hospitality, Retail product and Retail service Sectors. These participants who invested in health and safety expertise were concerned about their personal liability and all had prior experience with WorkSafe WA audits. They also described the *complexity* of the legislation and the time required to interpret and comply with their obligations. As a result, the employment of an in-house expert was considered a necessity.

5.5.1.3 Subordinate Theme: *Owner/Managers Want Simplicity*

Participants were asked to describe the type of resource and services that they would like to have available in order to meet their employment-related legislative obligations. When describing these resources participants were consistent in saying that while they would not want to pay for these services, a nominal fee would be acceptable. The words used by participants to describe such resources included: “*flowchart*”; “*checklist*”; “*consultant on call*”; “*amalgamation*”; “*someone I could speak to*”; “*one umbrella*”; “*one place to go to*”; “*consistent terms*”; “*different steps*”; “*someone to audit us*”; “*proactive contact from the Government*”; and “*something just for small business*”.

Participants described services characterised as follows:

1. A one-stop-shop which would be more efficient and would also obviate the need to know which agency to go to;
2. Simple checklists and flowcharts that would take them to the answer;
3. A consultant on call who has the ability to answer their questions;
4. A service tailored to the needs of small business, and
5. A proactive Government service.

Participants described the need for all services to be available under “*one umbrella*”, the desire for “*one website*” and “*one place you can go*”. Examples of issues put forward by participants included their confusion with dual Federal and State jurisdictions. Others talked about a preference for health and safety support to be provided as a single service through the FWO.

Searching for websites and phone numbers was considered to be a hindrance and it was not uncommon for participants to talk about wasting time trying to establish if they needed the WA Department of Commerce (Wageline) or the FWO. The subtlety of the employment legislation, while understood by Stakeholders, is not well understood by SME owner/managers.

“Yeah, see, because you’ve got so much compliance with different things, there’s a number of different departments involved. I would see that there’d be an amalgamation of this stuff and put under one umbrella.” (R6)

“A one place to go would be useful. I don’t think that will ever happen, however one place to go to.” (R15)

A desire to be led through simple steps was also shared by most participants. One participant said he would appreciate Government agencies' taking a leadership role and

expected to be told, *“do you know as a ‘partnership’ you're governed under State Government? Here are the resources you need”*.

Many participants stated that they did not know the intricacies of the information that was asked of them when they visited a Government website. Participants also talked about a desire for a flow chart that would have a predictive capability based that was based on the needs of an SME.

“You are here, you have started a business, you have how many employees? One, two, three...four? Okay, go this way, do this, do this, do this’, like a flowchart that walks through everything that we need to yeah, directly links to everything.” (R1)

Other participants talked about 20 point checklists or simple checklists for the various aspects of the employment legislation.

“I guess if there was a Government department or agency that has a resource that might be titled ‘The Guide to Business Establishment and Compliance’ and just bang, here you go, here’s your 20 point checklist. It’s that simple.” (R7)

Frequently, participants said they wanted someone to talk to. In some cases they made the point that they would prefer this service to be confidential so that, as stated by a participant, they would *“not be judged”*. Participants described a service where they could call a hotline and feel confident that they were receiving the information they needed. Others described a hotline that would validate and confirm the direction they were thinking about taking; however, also let them know if there was something they had forgotten or not thought about.

“This is how I read it. Is there anything I’m missing? Is there anything else I need to do?” (R17)

Most participants described a desire to work more closely with the Government agencies that can provide them with resources and support. Participants talked about the need for Government agencies to be more proactive in ‘finding them’ with a view to distributing support and information. One participant observed that Government agencies can find his business for the purpose of sending, *“meaningless surveys”* but did not contact him to let him know that something had changed from an employment-related legislative perspective.

There was a shared view that Government agencies can become involved with SMEs when they first register their business. This involvement was seen to include an agency taking an SME through a checklist of employment-related matters as part of their business initiation. Other proactive Government support was characterised as agencies contacting SMEs to ask, *“are you doing this?”*, *“are you aware of this?”*, and to check that they are *“doing it right”*.

Other participants reported that an audit would be worthwhile; however, on the understanding that this would not put them at risk of greater scrutiny of their employment-related legislative compliance. The context of the audit was *“quality assurance”* and would answer questions such as, *“this is what I want to do – what do you think?”* Another term

used was a health check whereby participants would be informed of any gaps in their employment obligations, and also provided with the information on how to “close those gaps”.

Finally, the overarching requirement was a support service managed by people who acknowledge that SMEs generally do not have the resources or the economies of scale to engage in-house experts to help them navigate their employment-related legislative obligations. Participants referred to a desire to deal with people who understand SMEs and do not make assumptions. For example, one participant said,

“Not a service where they go...562 manual pages, you need to comply with every single legislation. Hang on, I’ve got a small business, I’ve got three employees.”
(R12)

There was an assumption amongst participants that they were being exposed to more information than they needed to. Participants had a desire for a service that told them what they needed to know as an SME and nothing else. Unfortunately, the nature and *complexity* of employment-related legislation is such that the vast majority of the obligations apply to all businesses regardless of size or number of employees.

5.5.2 Stakeholder Participants

All Stakeholder participants talked at length about the *complexity* of employment-related legislative compliance. Stakeholders recognised the level of expertise required to correctly interpret and apply employment-related legislation and considered that this level of expertise was often outside the capability of an owner/manager.

Union and Employer Association participants reported most SMEs make a genuine attempt to meet basic obligations; however, reported that transitional arrangements of the FWA created challenges.

“We actually engaged with the CCIWA and said, ‘Look, what about we get together and we work out what the transitional rates are for the modern award.’ Between the two of us we’re pretty confident we know the award. So we did that exercise and I think I can confidently say there would be no SME could have calculated those rates on their own. Just an awful exercise.” (Union)

“But it is quite disconcerting when you ring up – someone rings up and they’ve been in business for five years and they don’t even know if they’re in the State or the national system. It’s frightening really.” (Government)

Stakeholder participants shared a consistent view that owner/managers need expert assistance to navigate their employment-related legislative obligations. These Stakeholder participants also expressed that access to expertise is expensive and SMEs are reluctant to spend “more money than they need to”. Employer association participants talked about a number of independent industrial relations consultants establishing themselves as low cost alternatives to lawyers and these participants questioned the quality of such consultants. One participant reported that the FWA was particularly complex legislation and often required support from employment lawyers.

“You see, one time industrial relations practitioners weren’t lawyers. Lawyers have only got involved in the last 20 years because they found that they could print money.” (Employer Association)

“So, I know in our area of alternative dispute resolution, which is another section of our organisation, which often requires referrals to legal practitioners.” (Government)

The quality of Government agency personnel was talked about by Unions and Employer Association Stakeholder participants. These participants recognised that employment-related legislation is complex and providing a simple service comes with significant challenges. They also stated that Government personnel who support owner/managers need to be knowledgeable and highly skilled in employment-related legislation and they held a view that this is not the case.

“So responses and information that you get are very black and white. They don’t take into consideration some variances or other - possibly other entitlements or content with clauses within an agreement which might actually impact what the question is. You know, because quite often if - in agreement there might be an entitlement, but there’s probably three or four other parts of the agreement that’s relevant.” (Union)

“I don’t know the level of qualifications in regards to IR that people work at Fair Work Ombudsman. So if you’re ringing up you could be talking to anyone who’s probably just keying in some key points and then out comes the answer that makes sense.” (Union)

“You could ring one up and he’ll say one thing, you’ll ring another up and he’ll say something else, right? And most of them don’t know what they’re bloody well talking about, right. And they almost behave as though the employer is now guilty, now prove yourself innocent.” (Employer Association)

Stakeholder and owner/manager participants report a shared view that employment-related legislation is complex. Government Stakeholder participants comment that the *complexity* of the legislation makes it difficult to deliver an online support service. Stakeholder and owner/manager participants both question the capability of Government employees charged with assisting owner/managers with employment-related legislative questions. In doing so, participants acknowledge that the *complexity* of employment-related legislation requires highly skilled resources to provide support and compliance advice. All participants recognise that Government hotlines are not staffed by employees with this level of expertise.

5.5.3 Summary: Complexity

The *complexity* of employment-related legislation is central to other superordinate themes and contributes to the behaviours and experiences of SME owner/managers in meeting their obligations (Figure 5-5).

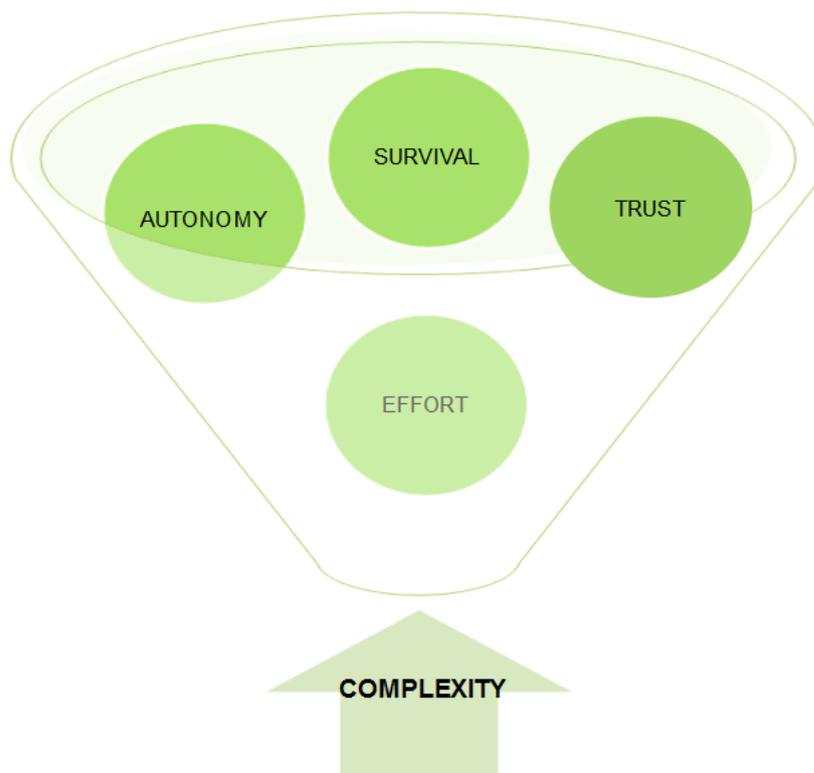


Figure 5-5: *Complexity* - Potential Causal Relationship

It is proposed by the research that the level of compliance *effort* can be reduced if employment-related legislation is less complex. Owner/managers are not as inclined to assume their obligations if the legislation is simpler. If employment-related legislation is simplified, owner/managers will be less concerned with time and cost to comply. Also, Government agencies will be more able to provide concise support to owner/managers both online and through the use of hotlines.

5.6 Finding: *Survival*

5.6.1 Owner/Manager Participants

The finding of *survival* is grounded in participants' desire to balance their level of *effort* to comply, with the *survival* of their business. When participants were asked to describe their experiences navigating their employment-related legislative obligations, owner/managers directly or indirectly expressed strategies that sought to minimise their exposure. Participants also talked about balancing the *effort* with the chance of being caught doing something wrong (Figure 5-6).

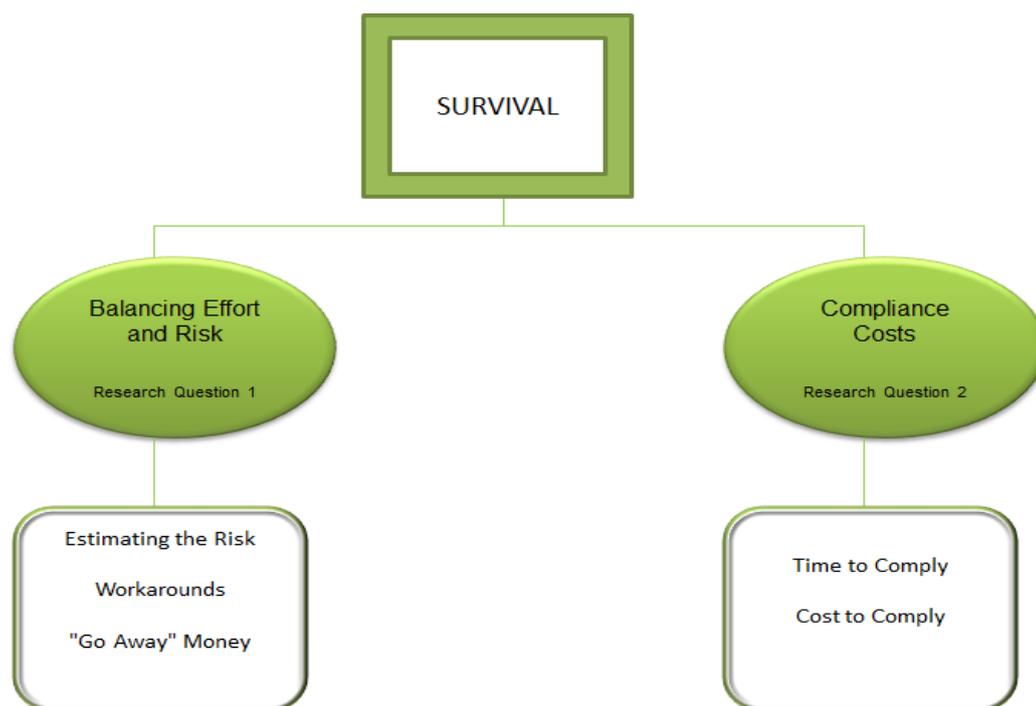


Figure 5-6: *Survival*

All participants referred to the *survival* of their business and the opportunity cost of not spending time on ‘core’ business activities. Participants talked about balancing “*every box being ticked*” from an employment-related legislative compliance perspective and “*keeping the wolves from the door*”.

Participants acknowledged anxiety around complying with employment-related legislative obligations using words such as “*daunting*”, “*nasty*”, “*fear*” and “*scary*”. One participant stated the stress of compliance resulted in SMEs “*getting ulcers*”. The fear of “*not knowing what they don’t know*” was described by all participants, as was “*crossing fingers*” and “*fight shadows*”.

The perceived cost of complying in terms of money expended on expert resources was discussed in the context of business *survival*; although, time away from the business was a more emotive discourse for many participants. They talked about time spent away from their families and subsequent risk of divorce or breakdown of significant relationships by SME owners.

5.6.1.1 Subordinate Theme: *Balancing Effort and Risk*

Participants talked about their approaches to compliance and these included a conscious and unconscious evaluation of *effort* to comply against the risk of being found to be non-compliant. Many described ‘workarounds’ that can minimise exposure to breaches of employment-related legislative compliance. The use of covert discriminatory strategies during recruitment is common and SMEs use casual and probationary employment arrangements to avoid exposure to unfair dismissal. Additionally, participants all described paying ‘*go away money*’ in preference to expending time and money defending a claim for unfair dismissal.

5.6.1.1.1 Estimating the Risk

Factors that underpinned a participant's decision making process when balancing *effort* in the context of business *survival*, and the risk of being found to be non-compliant, were grounded in:

1. Paying limited attention and committing to deal with matters as they arise;
2. Balancing *effort* against the cost of pecuniary penalties;
3. The perceived impact of pecuniary penalties.

Participants talked about being so busy with running their business and staying solvent that they generally required something that "*arrives in front of their face*" in order to prompt them to further investigate or take action on an employment-related legislative obligation. Other participants referred to focusing on revenue and aspects of their business that earned money. Most recognised that their inattentiveness could be an error of judgement in the event that they are found to be in breach of their employment-related legislative obligations.

Other participants were more confident in their strategies to balance *effort* with risk and talked about the pointlessness of spending time worrying. These participants said that they would deal with a matter when it arises and, "*fight it when it comes*". There is frustration amongst SMEs with employment-related legislative compliance, and compliance in general. Participants questioned, "*when are we actually going to earn our living?*" and "*where does it end?*" However, participants also reported that they will take steps to "*educate themselves*" if they know that the FWO is targeting their industry or geographic location.

Pecuniary penalties were not seen by most participants to influence their decision making processes. Those who did recognise penalties as a motivator to comply with employment-related legislative obligations took the position that the size of the penalty will contribute to their evaluation of risk to their business. As stated by one participant, he would calculate the potential penalties and consider whether or not paying the fines would be cheaper than the time and cost of compliance:

"If we get caught and fined every three years, then it might be worth not worrying in the interim." (R19)

Others reported a financial balancing decision and talked about how a potential fine of \$20,000 would drive them to comply (R11); however, a few hundred dollars would have no effect. However, a fine of between \$50,000 and \$100,000 would take employment-related legislative compliance, "*to the top of my four or five things that I'm trying to do business wise at any one time.*" (R14).

5.6.1.1.2 Workarounds

Participants reported approaches they took to circumvent employment-related legislative obligations and these are characterised as:

1. Employing casual employees;
2. Terminating employment within the first six or twelve months; and,

3. Covert discrimination in recruitment.

Each of these 'workarounds' is now discussed:

a) Casual Employment

Participants acknowledged a preference to hire casual employees and the motivation to do so was to resource the business based on demand and supply. Participants also described perceived benefits in reference to underperforming employees or employees who did not fit in. Participants reported not rostering unsatisfactory employees and this had the effect of forcing them to leave. Others described avoiding giving hours to underperforming or unwanted employees and that most "*get the message*". One participant described a time when she wanted to dismiss a difficult employee who was permanent and had been employed for around two years. She recalled that she made the decision that redundancy was a cheaper and less confrontational approach; therefore, managed the dismissal as a redundancy.

b) Probation Periods

Dismissing employees within their probation period or within the first six or twelve months of their employment was reported by many participants. Without exception, participants with fewer than fifteen employees were aware that unfair dismissal did not apply until an employee had been employed for twelve months or more. At the same time, those with fifteen or more employees knew that their employees were unable to lodge a claim for unfair dismissal within the first six months of their employment. In describing situations where this occurred, participants reported the relief of having been able to dismiss the employee before the six or twelve month period had lapsed.

"It was a bit of a rush to let her go because she was coming up to 12 months and we suddenly realised that it was only a week and a half." (R14)

"She'd been working with us less than 12 months and at that stage we were less than 14 staff. So, we were sort of under." (H10)

c) Discrimination

Covert discrimination was described by nearly 50 per cent of participants. Justification was generally grounded in business *survival* and justified by the cost of hiring the wrong employee. Participants talked about their preferred employee attributes and why these attributes were important to them.

"We're looking at hiring mums who are in their 30s from a reliability point of view because we can't have young people who are unreliable." (H13)

"So in hiring, we're very wary of not being very specific– the type of person we want on our front desk is older than 30, maybe even older than 40. But we can't advertise for someone that must be over 40." (R3)

"I won't hire Australians. They supposedly think they know the law." (H6)

Other participants described how they would avoid hiring candidates based on attributes such as family responsibilities, disability, impairment or religion. These participants reported that they would be careful not to ask questions that might attract attention or provide an impression that the candidate had not been selected on the basis of a protected attribute. Words such as, *“how you angle it”* and *“careful not to say the wrong thing”* were used by participants. One participant had formed a view that she could ask any question she chose to at an interview. Although she took the position that it was then up to the candidate to decide if they wanted to answer or not, she reported that she would *“move on to the next candidate”* if a candidate declined to answer. One participant was particularly concerned with hiring employees who might seek to take parental leave. While misinformed, the participant shared what she considered to be a genuine concern for her business.

“I can't afford to pay someone for 12 months while they're on maternity leave because they're not making the money. Imagine having your six staff on maternity leave, then what do you do? You close down.” (H25)

5.6.1.1.3 ‘Go Away Money’

While the workarounds described in the previous Section of this Chapter report on ways in which SME owner/managers' circumvent their dismissal and discrimination obligations, participants also reported paying money to exit employees from their business.

Generally, participants indicated that paying employees in the order of \$10,000 at conciliation is a more palatable option than hiring a lawyer and/or investing their time to defend an unfair dismissal claim. Other participants talked about paying sums of \$8,000 and \$11,000 at conciliation even though they believed that the dismissal was fair. These participants reported that their decision to settle was *“easier”* and *“less stressful”*. Most participants were complimentary of the conciliation service offered by the Fair Work Commission and the skills of the conciliators; although, some reported that they did not want to antagonise the commission.

“That's one people that I won't cross – anyone else, no problems; but not Fair Work. So it was just ten times easier. Sometimes it's risk versus reward.” (H8)

Even participants who said they did not generally acquiesce and felt that they had sufficient evidence to defend a claim for unfair dismissal, said that paying a settlement was healthier for an SME than retaining a *“bad”* employee who was counterproductive to the business.

Although reaching a settlement was considered to be a more palatable option than allowing a claim for unfair dismissal to progress to the tribunal (consistently referred to as *“the court”* by participants), words used to describe an unfair dismissal experience included *“unnerving”*, *“grief”*, *“stress”*, *“nervous”* and *“daunting”*. The risk of being ordered to reinstate a dismissed employ was particularly distressing for participants. These participants talked about the close proximity of an SME environment and the potential impact of a *“disruptive”* employee returning to the workplace.

Some participants were fearful of an unfair dismissal claim progressing. These participants were concerned that they would be ordered to pay compensation they could not afford and would lose their business. While the maximum penalty award for unfair dismissal is the payment of six months' salary, *survival* concerns were expressed by participants.

"I can't afford a massive fine, the business will go under and I'll lose my house, car and my life... maybe not my life, I'll probably hang around." (R12)

Some owner/managers' said that they preferred not to take action when an employee underperformed or misbehaved. They reported being anxious of an employee taking some form of action against them and would either wait for the person to leave or work around the areas of concern.

5.6.1.2 Subordinate Theme: *Compliance Costs*

Participants were asked to comment on their perceived cost of compliance. Additionally, participants were asked if they would be able to comment on the time invested in meeting their employment-related legislative obligations.

The responses provided by the participants can be categorised as:

1. My time and financial costs are minimal as I don't take any specific actions to comply other than using MYOB to pay wages.
2. I don't have access to internal or external expertise; however, I, or my partner (business partner/wife/husband), do the research and generally attempt to look after our employment-related legislative obligations.
3. I do have access to paid resources; however, my time (or my partner's time) is still needed to monitor our employment-related legislative obligations.

Participants reported on the impost of both time and money to comply as this related to the viability of their business. Time was discussed in the context of family life and the opportunity cost of initiatives to sustain and grow the business. Financial costs were discussed in the context of reduced profits.

5.6.1.2.1 *Time to Comply*

Participants who did not engage expert assistance to help them meet their employment-related legislative obligations talked about being "*chained to the computer*". For the most part, participants acknowledged that it was their responsibility to manage their obligations and recognised that this was an unpaid part of the role of owner/manager.

In attempting to quantify the time attributed to meeting their employment-related legislative obligations, participants reported, "*an average of a day a week*". Others described a feeling of "*all of my time*" and stated that the obligation was relentless. One participant had recently sold her 'employing' small business and now opened a small business without employees. She shared that employment-related compliance obligations were the reason she transitioned to a non-employing business:

“It was a really good business otherwise, it did really well. So I would say it was probably – well, between Ben and I combined, it was probably about, like, 70 per cent of our time was spent managing employment matters.” (H11)

Participants referred to continuing changes in legislation and stated that they expected compliance obligations to continue to increase. Health and safety compliance was reported as an area of concern and participants talked about not having enough time to meet existing obligations. The Work Health and Safety Bill 2014 (WA) (referred to as the ‘harmonisation’ legislation) was mentioned by many participants and those participants held a view that this proposed legislation will create further obligations for them.

The time spent on employment-related legislative compliance and the impact on family life was described as a concern by most participants. One participant said he was always *“the last to leave”* and this was because he attended to employment matters once his *“day job”* was over. Another talked about the strain on family relationships as a result of time spent on compliance obligations more generally. The participant reported knowing other owner/managers in a similar industry who had gone through relationship break ups.

“I know plenty who got divorced in the last few years, you know, the wife does the book work and rah, rah, rah, and I’m saying it’s just business.” (R18).

Other participants talked about accessing their husband or wife as a ‘free’ resource but then deliberated on the impact of this ‘free’ resource on their family life. One participant estimated that his wife worked two days in their business without pay and another said his wife managed employee pays and recordkeeping on the weekend.

In talking about regulation in general, phrases such as *“scares small business”* and *“more of my time when I’m not generating revenue”* were common. Participants reflected concern about what was better for family and business owners in the long run. The business opportunity cost of employment-related legislative compliance was described by most participants as taking time away from generating revenue. Participants talked about *“too much time”* and *“energy”* spent on employment-related legislative compliance as opposed to activities that contribute to profitability and sustainability of the business. Another participant described time spent on ‘core’ business activities as better *“for his family and better for him”*.

5.6.1.2.2 Cost to Comply

In addition to time required to comply with employment-related legislative obligations, participants reported a wide range of external *compliance costs*. In doing so, the perception of ‘expensive’ was also diverse. One participant reported that the cost of MYOB was \$70 a month and considered this *“a lot”* for a small business. Others reported annual employment-related *compliance costs* of \$20,000; between \$30,000 and \$40,000; \$50,000; between \$50,000 and \$100,000 and over \$100,000.

Participants described their expenditure on in-house and external fee-for-service expertise as *“way too much”*. Independent consultants were more economical than lawyers,

however, it was reported that they still charged in the order of “\$225 an hour”. Participants often referred to, “small profit margins”, and one participant reported:

“I’m lucky to make 15 per cent profit and quite often spending that profit back on the business.” (R12)

In-house expertise such as health and safety advisors were reported as significant business costs, as were memberships of the CCIWA and industry associations. Legal advice was avoided on a day-to-day basis because the cost was considered to be significant when lawyers were accessed.

Many participants found it difficult to put a cost on employment-related legislative compliance. Compliance was reported as a general business cost and not always attributed to specialised areas such as employment compliance. Participants talked in the following terms:

“The cost of complying with the myriad of various regulations, it’s difficult to put a dollar figure on it.” (R17)

“I would probably say it’s one person, you know, it’s one person full-time really, you know, a full-time equivalent.” (R16)

5.6.2 Stakeholder Participants

Stakeholder participants reported a view that SME owner/managers balance time and cost spent on employment-related legislative compliance with their own *priorities* and business *survival*. All Stakeholders talked about owner/managers’ focusing on ‘core’ business and the need to stay in business.

“They just want to get on with running their business, looking after their families.” (Government)

“From a red tape point of view, how much time does a business have to spend on filling in forms, providing returns, finding out what their obligations are.” (Government)

Stakeholder participants put forward a view that SMEs walk a fine line between meeting and breaching their employment-related legislative obligations. There was a consistent view amongst Stakeholders that SME owner/managers are rarely motivated by an overt desire to flout the law but their level of *effort* correlates with business *survival* and the risk of being found out.

“Whether they thought that they were going to get pinged by industrial inspectors. They might think, ‘Oh, I’ve been in business 20 years and never seen one. Maybe I just continue to wing it.’” (Union)

“But a lot of the stuff is so unlikely to ever occur that they do a risk/reward balance in their heads and go, ‘No, it’s not worth worrying about.’” (Employer Association)

“IR is one of a number of things that they need to comply with, maybe it’s just too hard, ‘I’m not going to put the effort in, I’ll run the risk.’” (Government)

The cost of expert external or internal expertise was said to be perceived as cost prohibitive by owner/managers. The majority of Stakeholders commented that SMEs do not have the economies of scale to engage in-house experts. Employer Association Stakeholders also reported that time spent on employment-related legislative compliance impacted on owner/ managers' health and family life.

"With retailers you probably wouldn't find too many under about 500 employees that would go to an HR person. They run fairly lean and don't really want to employ a payroll person who has to spend two days a week doing just payroll." (Union)

"I mean, most small businesses complain if they have to outsource anything, you know, if they have to pay for any advice. So I think in the small to medium enterprises' mindset it's expensive." (Government)

"You do hear about business owners who work their working day and then they go home at night and do their paperwork. I know that from my own experience that's what you do." (Employer Association)

Stakeholder and owner/manager participants were consistent in sharing a view that owner/managers take chances with employment-related legislative compliance and do so to balance time and cost against investment in 'core' business *survival*. Only one Stakeholder participant talked about the payment of 'go away money' while the majority of owner/manager participants reported paying money to ex-employees in preference to expending further time and cost on pursuing what they considered to be unmeritorious unfair dismissal claims. Additionally, Stakeholders did not comment on owner/manager 'workarounds' such as employment of casuals and use of probationary periods to minimise unfair dismissal eligibility.

5.6.3 Summary: *Survival*

The superordinate theme of *survival* is underpinned by findings that owner/managers consider the safety of their business, themselves, and their family when making decisions on their employment-related legislative compliance *efforts*. The time and cost expended in meeting their obligations is fundamental to the decisions that they make and compliance is generally viewed more broadly and not limited to employment-related legislative compliance.

It was uncommon for participants to refer to compliance obligations as an integral part of running a business but some were pragmatic in this regard and shared, *"it becomes part of business I think"*. For the most part, participants identified employment-related legislative compliance as another regulation and one that was complex to navigate. *Complexity* took their time, or they paid for experts to meet their obligations. Either way, the time or expense had a perceived negative impact on the *survival* of their business.

Survival cannot be considered in a vacuum and a number of factors influence it. For this reason, the potential causal relationships that may exist between *survival* and other superordinate themes are presented in Figure 5-7.

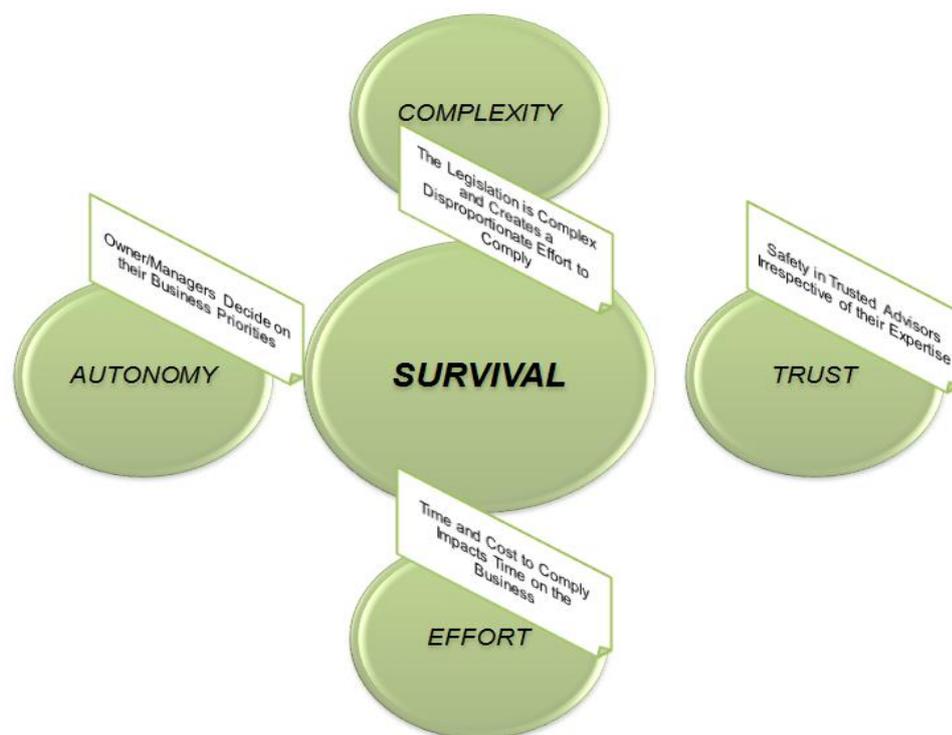


Figure 5-7: *Survival* - Potential Causal Relationship

5.7 Finding: *Trust*

5.7.1 Owner/Manager Participants

The superordinate theme of *trust* refers to owner/managers' seeking employment-related legislative advice from people whom they *trust* (Figure 5-8). What leads owner/managers to seek advice from sources who are not generally experts in the field of employment-related legislation is underpinned by distrust of Government agencies and this distrust was characterised as a fear of “*drawing attention*” to their business. Owner/managers also have a desire to avoid the cost of fee-for-service providers; but, this appears to be a secondary factor.

Government services to support employment-related legislative compliance are free to owner/managers. However, distrust and/or fear lead some owner/managers to avoid these services, or keep them at arm’s length. Owner/managers have the option to engage in-house or external expert resources at a cost, but many participants elect to source advice from people who they *trust*. In most cases, these *trusted advisors* are non-experts in employment-related legislation

Participants talked about working with family members, friends, accountants, and their network generally to meet their employment-related legislative obligations. These experiences are now discussed.

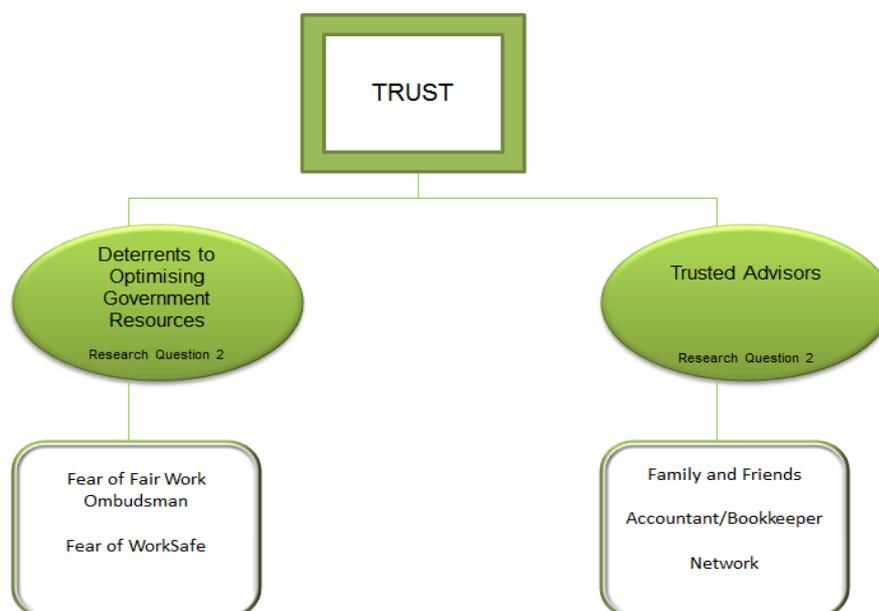


Figure 5-8: *Trust*

5.7.1.1 Subordinate Theme: *Deterrents to Optimising Government Resources*

Participants were asked to describe their knowledge and use of Government resources such as the WA Department of Commerce, the FWO, WorkSafe WA and the SBDC. In addition to sharing their experiences and describing some of the challenges discussed elsewhere in this Chapter, participants spoke about their nervousness when engaging with Government agencies. Words and phrases such as, “bully”; “fear of being prosecuted”; “someone’s going to shoot it off”; and “put on a blacklist” characterise the essence of participants’ descriptions of their experiences, whether real or anticipated.

5.7.1.1.1 *Fear of the Fair Work Ombudsman*

Most participants referred to a fear of being targeted by Government agencies. When asked to explain this fear, participants described having, “stuck your head up out of the sand someone’s going to shoot it off”. Participants were generally reluctant to share the identity of their business with the FWO for fear of becoming known to the agency. There was concern that if they “asked a question”, agency employees would become aware that the SME needed help and may not be fully conversant with their employment-related legislative obligations. The concern stated was that this initial contact may prompt an audit of their business:

“Because you’ve ticked all the boxes and done the right thing and rung somebody for advice, you then become the target because they go, ‘oh, you’re not doing that properly.’ So I’ve highlighted essentially an area that I might not be proficient in and that’s frustrating.” (R2)

The perceived power of the FWO was considered to be significant and generally there was a nervousness that accompanied its role as a support and resource provider. Participants associated the Government agency with audits, and perceived “*inflammatory*” and “*scaremongering*” media releases by the FWO that were often distributed by industry associations. Participants talked about being made aware of FWO audit campaigns targeted at their industry and one participant described the thought of an audit as “*an absolute nightmare*”. One campaign by the FWO was recalled by a participant who reported that the audit uncovered an inadvertent underpayment of shift penalty rates. The back payment plus penalties amounted to around \$200,000 across a number of pharmacies, and the participant described this outcome as “*frightening*”.

In general participants held a negative opinion of the FWO. Examples of comments put forward by participants illustrate distrust and fear:

“SMEs should be more scared of them than the taxation or any other Government organisation.” (H6)

“The Fair Work Ombudsman is as far from their name as possible.” (R18)

“The Fair Work Ombudsman is like a policeman. They’re so much happier giving a speeding ticket to somebody doing 9km over the limit with a camera compared to chasing the real crooks because that’s too hard.” (R22)

Participants stated that SMEs are an “*easy target*” for the FWO and that this was the reason why SMEs received more attention and were the subject of repeat audits from the Government agency. Participants feared that attention from the FWO could impact on the *survival* of their business and expressed concerns such as being “*put out of business*” or “*shut down*”.

Whether real or imagined, the existence of fear and distrust of the FWO was consistent across half the number of participants. These participants shared a desire to have access to Government resources where they could feel safe and “*without fear of being prosecuted*” for getting something wrong.

5.7.1.1.2 Fear of WorkSafe

The word “*bully*” was used by a number of participants when referring to WorkSafe WA. Attracting the attention of WorkSafe WA was described “*as being forever stuck in their bullseye*”. One participant reported:

“We had like boxes and boxes of bloody Band-Aids that had expired. They didn’t close us down or anything.” WorkSafe say, ‘We’re not here to bloody be the big bullies anymore’.” (R5)

When participants were asked if they were aware of a ‘no cost’ health check service provided by WorkSafe WA (no longer offered), responses were polarised. To varying degrees of confidence and interest, less than half of the participants said they might be interested in sourcing assistance from WorkSafe WA. The remaining participants likened agreeing to such a service to “*inviting the tax office out to look at your books*”. Others were

more direct and responded, “No, and I don’t want a visit from WorkSafe!” and “I’m not sure we want them to visit”.

Participants compared making themselves known to WorkSafe WA as “opening a can of worms” and some were scathing about what they considered to be peculiarities of orders issued by inspectors. There were reports of orders being issued for no reason (as perceived by participants) and inspectors considered to be focused on “finding something - anything”. One participant described her experience as:

“Things like that the ubiquitous milk crate can be great for putting things on. You’ve got to go and buy something which is not a milk crate but it basically is the same shape and size and function, but you can’t have a milk crate. It was more of a ‘you fix this or I’m coming back for more’.” (H11)

A few participants had a positive experience with WorkSafe WA and there were also participants who had no awareness of WorkSafe WA or its function. Participants who shared a positive experience reported that they had “encouraged” WorkSafe to come back and had “asked them for a bit of an audit”. Another participant found WorkSafe inspectors to be “really good, really cooperative and really helpful”. Participants who were unaware of WorkSafe wondered if they “could come and write their procedures for free” or tell them “what first aid kit” they should have.

Whether or not negative perceptions of WorkSafe WA or the FWO are reflective of reality, is inconsequential in the context of this analysis. Participants talked confidently when describing their interactions and experiences in sourcing support and advice from family, friends, accountants and their network generally. No one questioned the ability or experience of these *trusted advisors* to provide employment-related legislative advice. Rather, participants talked in terms of “he’s been through it before so I’ll talk to him”; “hearing things on the grapevine”; and “my friend’s husband works for a big corporation” when describing their *trusted* sources of support and knowledge to comply with their employment obligations.

5.7.1.2 Subordinate Theme: *Trusted Advisors*

Analysis of the data identified the term ‘*trusted advisor*’ and includes family members, friends, accountants, and owner/manager networks generally. These are people who participants referred to when asked where they go for employment-related assistance and support.

5.7.1.2.1 *Family and Friends*

When talking about family and friends as sources of employment-related legislative support, participants reported talking to this group of *trusted advisors* for a number of reasons. Some participants described family and friends who worked or had worked in a large business or were employed “by the Government”. Others referred to those who “had been around HR”, had worked with a business where the employer “was across IR”, or had “studied a bit of IR”. In describing other reasons for using a family member or a friend for

employment-related legislative advice, participants talked about people who were mentors or who had been around business for a long time.

Family and friends were said to provide assistance in a number of ways and these included: providing an opinion, directing the participant to someone they considered as one of their own *trusted advisors*, supplying policy, procedures and contract templates from other employers, and generally being someone to validate that they “*had got it right*”. In describing their interactions with family and friends, participants used words and phrases such as “*he’s been great*”, “*awesome*”, “*far better at this than me*” and “*I can call on him at the drop of a hat*”. Participants displayed enthusiasm when describing these interactions and conveyed confidence that they had easy access to a *trusted advisor*.

5.7.1.2.2 Accountant/Bookkeeper

Many participants considered their accountant to be a source of initial knowledge when seeking employment-related legislative support. In some cases it was assumed that the accountant would be able to help; while in other cases it was hoped that they could refer the participant to someone else who could help. Every participant had access to an accountant whom they used on a regular basis. Some participants employed a bookkeeper who looked after the accounts function and the payroll.

Accountants and bookkeepers were often deferred to by participants and they were generally considered to add value across all aspects of the business, including employment-related legislative compliance. Their relationships were grounded in *trust* that had been developed over a number of years. A level of security was then derived from such *trust*. Participants reported that they had known their accountant privately for years and “*he offers quite a bit of advice*”. Another participant talked about their trusted accountant who had 20 years’ experience and was “*well and truly up with everything*”. One participant met with her accountant a few times during the year and he “*kept them in the loop*”. Bookkeepers were equally valued and their payroll experience was considered to extend beyond applying the correct award conditions. Again, those who had formed a business relationship over a period of time were particularly well-regarded by owner/managers and described as being “*on top of it*” and knowing a “*fair amount*” about employment-related legislative compliance.

The actual ability of the accountant, bookkeeper, or payroll officer with regard to employment-related legislative compliance was less of a discussion point during the interviews. Importantly, the participants who rely on these professionals do so because they *trust* them. That is, participants believe that these *trusted advisors* want the best for them and will not let them down.

5.7.1.2.3 Network

Participants talked about their business networks in a number of ways. Some referred to seeking support from colleagues whom they had worked with before and whom they trusted. In some cases these colleagues worked for a large business and were considered a source of knowledge and support by virtue of their association with a larger organisation.

Other participants referred to opportunities to network with colleagues in similar industries or those who were operating in the same geographic location. In other cases, the relationship was informal, or with an individual or a group that the participant admired.

“I’ve got a property developer client of mine who is quite high up with Water Corporation, he has owned multiple businesses and, as I said, is a property developer. I’ve known him for eight years. He was first of all a client and now he’s a mentor. So I bounce stuff off there.” (R6)

In referring to business networks as a means of supporting their employment-related legislative compliance, participants described experiences that were grounded in common experiences and empathy. Participants referred to: *“peers who were willing to share”*, and, seeking support from others who have been *“in a similar situation”*. Others described the value in sharing their thoughts and ideas in a safe environment.

“I previously had quite a structured relationship with a friend who had another small business and we used to get together and talk. We were in non-competing industries and we used to get together and discuss things like HR in detail. You know, if she had an employee issue to do with needing to get rid of someone from her business, she would ring me and we would talk it through together.” (R16)

Some participants could not always recall where they sourced information. Nonetheless, they referred to the value of informal discussions with business colleagues where they would share information relevant to compliance and other matters.

Only a few participants had a network of friends who were human resource professionals, worked in large corporations, and were described as being *“happy to assist”*. On occasion the advice from the human resource professional did not necessarily translate well into an SME environment; although, participants described feeling confident and trusting the help they received from these friends.

The accuracy of the advice or ‘word of mouth’ received by way of a business network is again of less importance for the purpose of this research. Participants experienced empathy and a confidence that they were ‘all in it together’. There was a sense of security in knowing that someone else had made a decision in a particular way and the decision had not led to any apparent detrimental result. Participants relied on their business network because they were in similar situations and experienced common challenges. *Trust* underpinned their relationship and the accuracy of the advice was a secondary consideration.

5.7.2 Stakeholder Participants

Stakeholder participants held a primary view that owner/managers accessed informal networks to avoid paying for expert assistance. Asking ‘non-experts’ for advice was reported as a *“cheap option”* for owner/managers. However, all Stakeholder participants recognised that SMEs can be fearful of Government agencies and some stated that this fear could make them reluctant to access Government resources.

“Because I’m a Government agency they are afraid of me.” (Government)

“I think it’s quite scary for small businesses...you say you want to give us, you know, this support. So it’s kind of like there’s always a fear.” (Government)

“Fair Work Ombudsman is the Gestapo and will not audit an organisation that is unable to hand over a neat set of books.” (Employer Association)

Government Stakeholders described concerns about owner/managers accessing family, friends and networks to seek employment-related legislative assistance. These concerns centred around owner/managers potentially not making informed decisions and the impact of these decisions on their level of compliance. Union and Employer Associations referred to owner/managers’ informal networks and acknowledged that these informal networks were trusted sources of employment-related legislative advice.

“I’m sure, comes from word of mouth, where someone will say, ‘I spoke to this bloke and he sorted me out with this and that.’” (Union)

“That peer, kind of, information network is quite strong and I think we’ve seen many, many years and many examples on a whole range of subjects where that is one of the first points of call. And so it is actually a quite serious problem.” (Government)

All Stakeholder participants described owner/managers’ *trust* in accountants and some held a view that there was an overreliance on the skills of an accountant. An Employer Association participant voiced concerns about the quality of an accountant’s industrial relations skills; but, other Stakeholders were unconcerned about this reliance on an accountant in an SME.

“Interestingly accountants tend to play that role fairly significantly. And because you’re good at numbers and you’re actually adding up the payroll and doing the tax then we’re thinking that you should be doing this too.” (Government)

Owner/manager participants did not refer to *trusted advisors* as sources of unpaid advice while Stakeholder participants were of the view that cost was the primary motivator. Stakeholder participants commented on an awareness of owner/manager fear of Government scrutiny, but their observations did not capture the degree of concern reported by owner/managers. Government participants talked about FWO media releases as motivators to SME employment-related legislative compliance. Owner/managers extended a contradictory view and expressed that FWO media releases further impeded their *trust* in Government agencies and only reduced their use of Government resources.

5.7.3 Summary: *Trust*

There is a noticeable contrast between the words and actions participants used to describe interactions with *trusted advisors* when compared with those used to describe exchanges with Government agencies. With that said, differences are of course to be anticipated. There is formality and distance inherent in the relationship between SME owner/managers and Government agencies, while *trusted advisor* relationships are personal.

As reflected on in the previous Sections of this Chapter, the accuracy or otherwise of the advice sourced from a *trusted advisor* is not the priority for owner/managers. Participants access their *trusted advisors* when seeking somewhere safe to explain their dilemma and seek support. It is a place where they consider they will “*not be judged*”.

The use of *trusted advisors* can also be examined in the context of participants ‘not knowing what they don’t know’. In some cases, participants were unaware that there were Government agencies that could provide them with support, resources and assistance at no cost. Typically these participants were not aware of fee-for-service providers either. Without the knowledge to progress a formal means of assistance to meet their employment-related legislative obligations, it is conceivable that informal resources such as family members, friends, accountants, and business networks form naturally over time to become *trusted advisors*.

Finally, there is a dilemma implicit in the dual function of the role performed by agencies such as the WA Department of Commerce, the FWO and WorkSafe WA. All three agencies provide employment-related legislative support services and resources to SME owner/managers. At the same time they also hold the regulatory and prosecutorial mandate. Participants were not always able to articulate the fear or distrust that they reported and often referred to what others had said or what they had heard. Logically it is perhaps understandable that participants were wary of sharing their business details with Government agencies for fear of raising awareness of their need for assistance and this is only reinforced by the regulatory nature of the role of the agency.

As stated previously, superordinate themes are potentially causally related to each other. To assist with the representation of these relationships as they relate to *trust*, Figure 5-9 is provided.

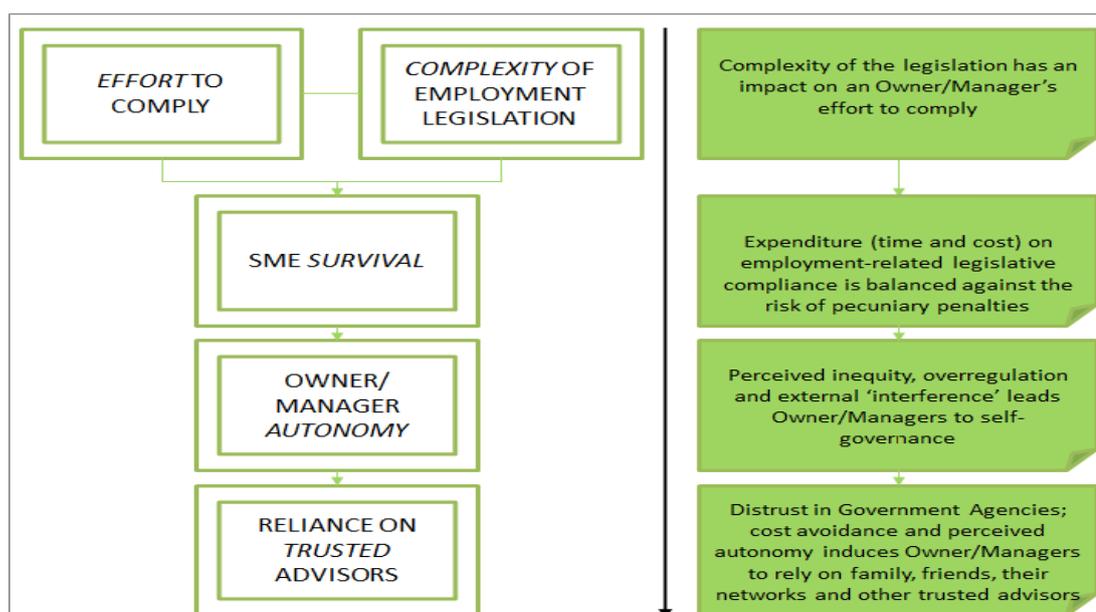


Figure 5-9: *Trust* - Potential Causal Relationship

5.8 Finding: *Autonomy*

5.8.1 Owner/Manager Participants

The findings identified two characteristics to the superordinate theme of *autonomy* (Figure 5-10). One concerned the *dynamics of the employer/employee relationship* and an expectation that close proximity can support employers and employees reaching mutual agreement. The other related to a finding that owner/managers are frustrated with over-regulation, *complexity*, and interference by external parties. Owner/managers also held a perception that employment-related legislation is positively biased toward the employee.

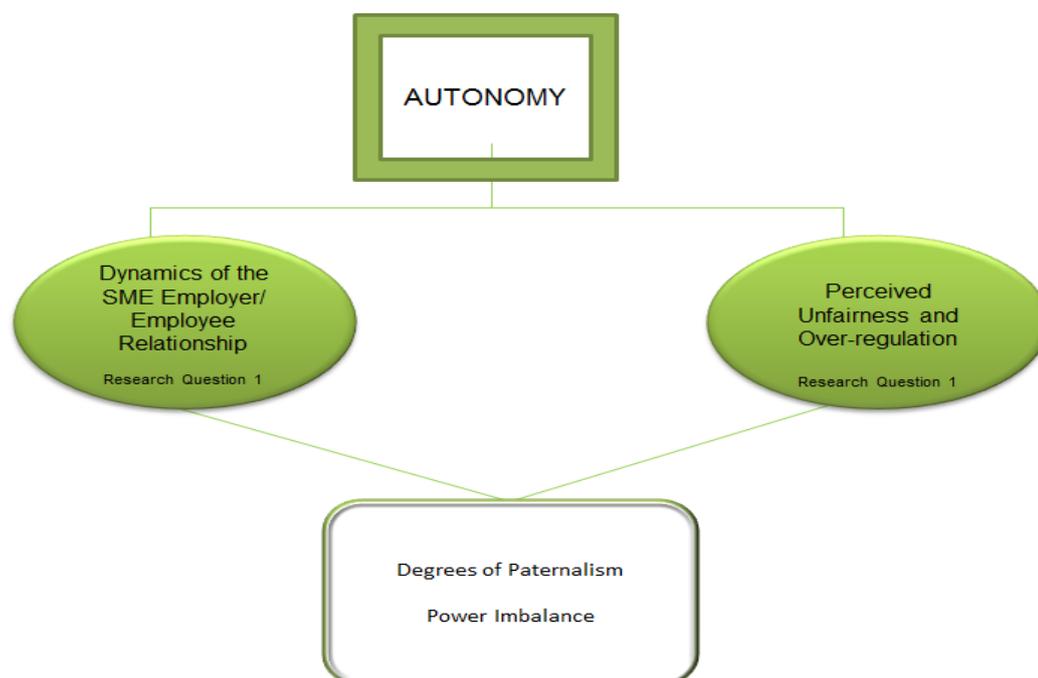


Figure 5-10: *Autonomy*

5.8.1.1 Subordinate Theme: *SME Employer/Employee Relationship*

Participants talked about their relationship with employees in terms such as “*give and take*”; “*nothing we cannot work out*”; “*it’s my house*”; and “*moral obligations*”. The employer/employee relationship was at the forefront of the information shared by owner/manager participants. The perception held by participants of their relationship with employees spanned a continuum from total employer *autonomy* “*it’s my house*” through to genuine care:

“We’re always thinking about what’s best for our employees and part of that would have to be that we are doing the right thing legally.” (R4)

Concepts such as paternalism, equity and power were drawn from the research and these findings are now discussed.

5.8.1.1.1 Degree of Paternalism

To varying degrees, participants described a management approach that reaffirmed their role as 'the boss'. Some participants couched their comments in the context of 'give and take', while others were overt in describing their role as the decision maker.

"It's my business. I'm employing them. I should be entitled to have working for me who I like and not be dictated to by somebody else." (R15)

Participants reported setting work and behavioural expectations with employees. These employer/employee conversations were unilateral and created a foundation that the employee would leave "through mutual agreement" if they failed to meet these expectations.

"So 'if you don't run down this path, well the only other path is you're not going to be required here'." (RS6)

"I said, 'look, this is the direction that we're heading in. Do you really want to move in that direction?' 'No?' 'I'll need you to leave'." (R12)

Other participants were more indirect in how they described their expectations of their employees. Some talked about setting the culture and expecting employees to adhere to their "morals and values". Other participants described employees 'self-selecting' themselves out of the business when the employers' expectations were not met. In other words, they would resign because "they did not fit in".

In referring to their employment-related legislative obligations, participants talked about 'friendship' underpinning the relationship with their employees. Participants described treating their employees as they would want to be treated and doing what would seem to be the "reasonable thing to do". The personal nature of the SME employer/employee relationship was said to support open dialogue and decision making. Participants reported that employees would come to them before seeking external support to resolve an issue. Phrases such as "talk it through" and "nothing we can't resolve internally" were representative of the insights reported by participants.

While in the minority, some participants spoke passionately about their relationship with their employees and a commitment to doing the right thing. Their commitment was grounded by motivators such as: treating others as they wanted to be treated; meeting their moral obligations; attracting and retaining high value employees; supporting working parents; and keeping employees safe. One participant recalled a bad experience when she was an employee and had been "completely ripped off". The experience resonated with this participant and she was motivated to "not be that kind of employer".

Paternalism is defined as, "the policy or practice on the part of people in authority of restricting the freedom and responsibilities of those subordinate to or otherwise dependent on them in their supposed interest" (Oxford Dictionary 2016). How well this definition 'fits' with participant responses, spans a continuum. Some participants described their role in the employer/employee relationship in words which correspond with the

definition of paternalism. Other talked about forming friendships with their employees, but still stated that they were the decision maker.

Irrespective of the kind of the relationship employers believe they have with their employees, the relative balance of power between employers and employees must be considered. In describing decisions based on what is 'reasonable' or 'give and take', the perceived power, confidence and capability of the employee will influence the employee's ability to negotiate successfully with their employer.

Most participants talked about the employer/employee relationship being sufficiently robust to reach agreement on the terms and conditions of employment. In this regard, they considered legislation to be unnecessary and perceived that employment-related compliance interferes with the right of an employer to negotiate with employees. The relative power of the employer/employee relationship is now discussed.

5.8.1.1.2 Power Imbalance

Examples of unequal power in the employer/employee relationship were most apparent when talking about dismissal. Participants described decisions reached by "mutual agreement". Statements such as, "*they left of their own accord*"; "*we just sort of put pressure on her to meet targets*"; or "*I sat down with him and explained that it wasn't for him really*" were used to describe how unwanted employees were exited from the business. One participant described a number of instances where she had asked employees if they really wanted to be there or suggested that they would be happier elsewhere. This participant suggested:

"Someone should employ me to get rid of people because I'm fantastic." (R24)

Other areas of unequal power were presented when participants talked about providing flexibility in the workplace. Expectedly, flexibility was perceived in different ways by different participants. Some participants had formed a view that they could decide what was 'in it for them' if they provided an employee with some form of flexibility. By way of example, one participant reported an employee "*bitching*" about not being given a lunch hour while another said:

"We're 100 per cent flexi time so if staff want to work late at night they can, but we don't pay them overtime because that's their choice to do that." (R1)

Other participants had agreed a set of flexible operating principles with their employees, albeit informally and not as required by the FWA. Regardless, there appeared to be genuine intent to create a fair arrangement that benefited both parties equally.

Generational differences were discussed in the context of the relative power of the employer. Participants from a handful of businesses talked about their challenges with a business partner (at times, a relative) when taking steps to meet their employment-related legislative obligations. These participants talked about their business partners feeling "*bulletproof*" and coming from a position of assumed power. Participants described having to intervene when their business partner wanted to dismiss an employee, or introduce

workplace changes, without taking the required steps. When asked about their inclination to comply with their employment obligations, one participant reported:

"It's interesting because dad and I are two completely different people. One is at one spectrum and I am at the other spectrum." (H9).

Another participant who was responsible for the day to day management of a medium-sized business described *"heated discussions"* when she needed to prevent an action that would leave the organisation exposed from an employment-related legislative perspective. She described the managing director as someone *"old school"* who held the view:

"It's my business and I should get to run it the way I want to." (R21).

5.8.1.2 Subordinate Theme: *Perceived Unfairness and Over-regulation*

Owner/managers considered the close proximity of the SME relationship to differ from large businesses and held a view that employment-related legislation did not necessarily meet the needs of an SME. Participants who were aware of the procedural fairness provisions of the FWA reported that the level of rigour required by the legislation did not work in a close working environment. There were reports of situations becoming *"awkward"* and some participants deliberately breaching the procedural fairness requirement of the legislation to avoid a difficult work environment. One participant described *"giving up"* and keeping an employee because he did not have an appetite for the discomfort that *"three warnings"* would bring.

Participants were concerned about the fairness of employment-related legislation and described the provisions as being *"all for the employee"*. This echoed the sentiments of many participants who voiced frustration with what they considered to be employee-biased legislation. Participants talked in terms of the need to reach a settlement if an employee made an unfair dismissal claim and being judged and found guilty without the opportunity to easily defend themselves. One participant described a situation where they had engaged an HR expert to manage a difficult dismissal case and claimed that having an expert involved had stopped the employee from lodging a claim for unfair dismissal.

Reports of dishonest employees were shared by participants who attributed employee dishonesty to *"legislation biased against the employer"*. The majority of claims of dishonesty related to injuries at work and pre-existing conditions. Participants talked about employees who had not disclosed injuries or illness relevant to their job; however, then sought to rely on a medical condition when making a worker's compensation claim or seeking adjustment to their working conditions. Participants described a number of worker's compensation claims *"where there was no injury whatsoever"* and most participants had encountered *"unscrupulous"* employees who make *"fake"* claims. One participant talked about a worker's compensation settlement in excess of \$100,000 for an employee who claimed a work related back injury:

"I was down in Bunbury on holiday and there he was running down the beach hurtling a huge great 20 feet fishing rod." (H7)

Personal leave (sick and carer's leave) was also commented on by participants. In general, there was an expectation that employees would take their 10 days entitlement each year. Nonetheless, participants were cynical that employees were not always ill and would often abuse this paid leave. For the most part there was frustration that employees were protected by legislation in that medical certificates can be provided by a pharmacist or by way of a statutory declaration.

"To force an employee to go and get a doctor's certificate and actually pay for it stopped excessive sick leave prior to legislation." (H8)

The power of Unions within employment-related legislation was also challenged in two areas. Firstly, Unions were criticised by participants in the Retail and Hospitality Sectors for their defence of overtime penalty rates. Participants talked about employees being willing to work and customers wanting them to open on Sundays and public holidays; however, double time and a half on a public holiday was said to be "*crippling*". One participant predicted that penalty rates would:

"See businesses in Western Australia close down and no doubt reduce the workforce."

Secondly, participants in the Resource Sector were critical of the right of a Union to bargain on behalf of employees, even when they have "*minimal*" members. They referred to cases where Unions had been disruptive during prolonged bargaining and employers had run out of options and needed to move on.

"They felt that they had no option but to capitulate to Union demands that they could not afford." (RS4)

Over-regulation was referred to by most participants. Some described over-regulation as a source of anxiety and an impediment to the health and *survival* of SMEs. Others were frustrated and disdainful of external interference in their business. Generally, employers talked about over-regulation in terms such as:

Contempt: *"You need a policy on who orders the toilet paper – and get them to sign, sign, sign"; "some things are quite ridiculous" and "just pure nonsense"; and,*

Overwhelming: *"I'm sure someone could always find something - tell me I'm not compliant with some Act, this or this" and "so confusing and so scary and it really holds people back from wanting to start a business".*

Changes to employment-related legislation were reported as being drafted and introduced without consideration of SMEs. Participants described being left to implement change without help and were expected to wear the cost and time implications of that change. Participants referred to "*extra cost, extra time*" whenever major industrial relations legislation is changed.

In some cases, employment-related legislation was said to be contradictory and this caused anxiety amongst a number of participants. One participant provided an example of an employee whom he had hired who turned out to be problematic. The reasons underpinning

the employee's behaviour were mental health related and resulted in another employee lodging a harassment complaint against the SME. That participant reflected that he could have been more diligent when he interviewed job applicants, but also noted:

"But then you can't ask these questions at interview and you need to be careful around not being discriminatory." (H5)

Participants described over-regulation as inhibiting productivity, innovation and the ability to create a relaxed working environment. One participant suggested that regulations were of limited value to the employee. This participant was of the belief that an employer and an employee would be better served by the ability to jointly negotiate an agreement that met their needs.

5.8.2 Stakeholder Participants

The majority of Stakeholder participants acknowledged the informal interpersonal relationships that form between employers and employees in the close proximity of an SME. Participants referred to owner/managers who had a desire for 'give and take' and a preference to negotiate without external "interference".

Stakeholder participants reported informality and 'give and take' worked well when the employer/employee relationship was positive. However, all Stakeholders acknowledged that a relationship breakdown can be more acrimonious in an SME than a large employer. There was general consensus that SME employees do not pursue their rights until the employment relationship collapses.

"It's all fun and games until somebody blows the whistle and says, 'I want the rules to apply.' And people realise that they don't know what game they've been playing so they want to retrospectively apply the rules to a game that nobody knew, and there's some curious and interesting interactions that occur." (Government)

Stakeholder participants held a view that owner/managers believe they should be able to run their business without external influence. In doing so, Stakeholders used words like "arrogance", "disdain", and "frustration" to describe an owner/manager's attitude to rigid employment-related legislative obligations.

"They tell you, 'This is my business. I get to determine who works here and if I don't want them off they go'." (Union)

"There is a business mindset out there which says 'my business my way'." (Government)

"Oh, this is just ridiculous. Can't you just trust the fact that we've shown good faith in doing the right thing? How far down this road do we need to go?" (Employer Association)

There was recognition that compliance with employment-related legislation is overwhelming for owner/managers. Stakeholders commented that the abundance of information available to assist owner/managers meet their employment-related legislative

obligations could hinder rather than help compliance. For example, one Stakeholder commented that owner/managers can respond by “*giving up*”.

“I think they interact on a very ad hoc infrequent basis. It seems unsurprisingly overwhelmingly, they interact on the internet and seek information on the internet, and that in itself, I think, given the complexities of industrial law presents all sorts of dangers because there’s no mechanism to identify that the answer that you think you’ve got which appears to be right may not in fact be right.” (Government)

“It does get to a point where they, sort of, throw their arms up in the air, you know, ‘it’s too hard’. And they don’t make effort beyond that point because it just gets too much for them.” (Employer Association)

Both Stakeholder and owner/manager participants reported that SMEs desire self-governance of the employer/employee relationship. In seeking self-governance, participants referenced disdain for external “*interference*” and perceived over-regulation. Stakeholders and owner/managers talked about ‘give and take’ in the SME relationship but noted that informality can only exist when the employer/employee relationship is intact. Owner/manager participants talked about an employee-biased legislative environment; but, Stakeholders did not contribute to this owner/manager held view.

5.8.3 Summary: *Autonomy*

Participants wanted the ability to negotiate directly with their employees and signified that SMEs are better suited to negotiations undertaken in the unique environment of their workplace. However, in seeking this *autonomy* to negotiate independently, owner/manager participants did not acknowledge the power imbalance that can exist in a direct employer/employee negotiation. Participants also blurred ‘friendship’ and ‘give and take’ with a paternalist view of their employees.

Owner/manager participants considered that over-regulation obstructed their freedom to negotiate directly with their employees. While there are employer/employee environments where a ‘fair’ negotiation can be achieved between the two parties, these instances are probably skewed to employees in highly skilled or highly sought after professions.

5.9 Summary of Findings

This Chapter presented the findings emerging from analysis of the data drawn from semi-structured interviews. Five superordinate themes emerged from interviews with 41 SME owner/managers and nine Stakeholders.

The semi-structured interviews provided flexibility and the findings represent owner/manager and Stakeholder perceptions of their knowledge and awareness of employment-related legislative obligations and their willingness to comply. The findings also identified SME owner/manager compliance strategies and their perceived cost of compliance. Finally, the findings reflect SME owner/managers’ awareness of supporting resources and the extent to which these resources were used.

Figure 5-11 reiterates the potential causal relationships that may exist between the five superordinate themes and represents how *effort* contributes to the behaviours and experiences of SME owner/managers in complying with employment-related legislative obligations. The superordinate themes were *effort*; *complexity*; *survival*; *trust* and *autonomy*. It was found that *effort* is pivotal to how well SME owner/managers navigate their employment-related legislative obligations. However, the *complexity* of the employment-related legislation means that there is a fundamental requirement for owner/managers to have the capability to research, comprehend and meet these obligations. While any evaluation of capability is subjective, it is suggested that an even playing field does not exist.

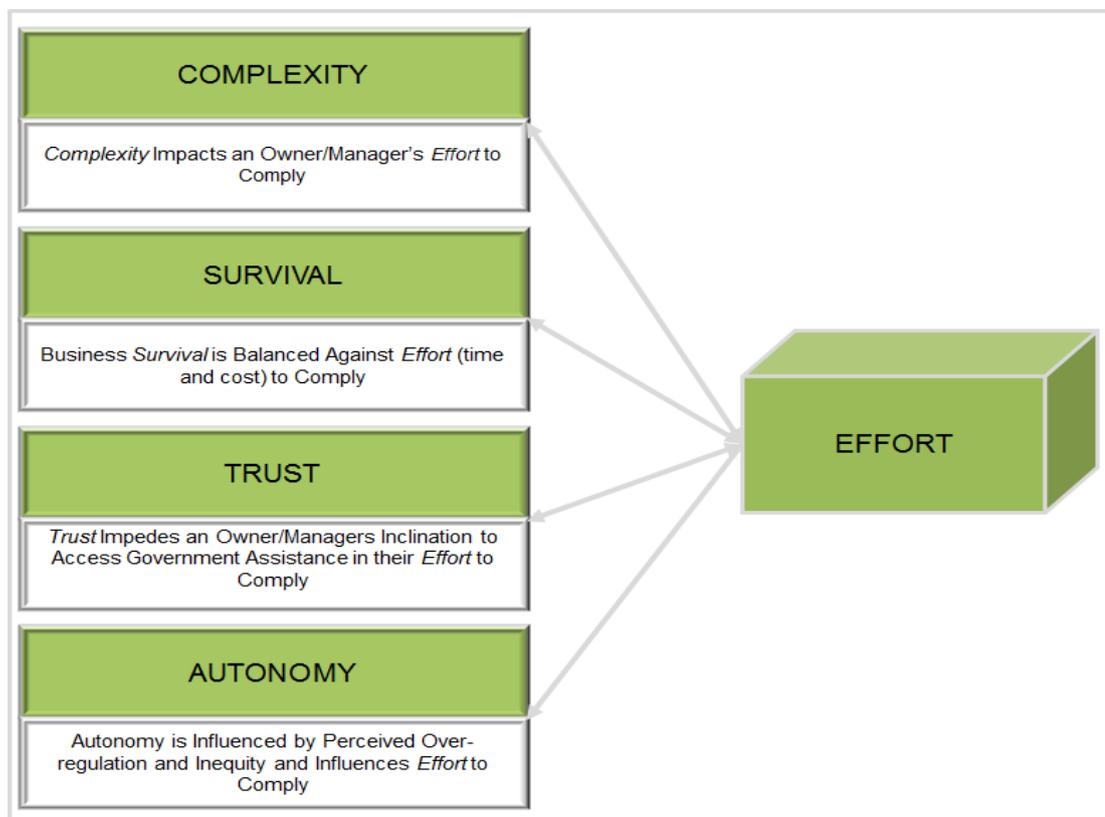


Figure 5-11: Potential Causal Relationships between Superordinate Themes

Irrespective of the *effort* to comply, some owner/managers will be more able than others to achieve an adequate level of comprehension and competence. If owner/managers are unable to be self-sufficient through the use of online tools and avail themselves of Government resources, their options extend to 'giving up', committing more time to further research and understanding, or paying for expert advice. It is these decisions that influence *survival* in that time or cost away from the business can impact on revenue and ultimately profitability. It is perhaps not unsurprising that SME owner/managers build reliance on *trusted advisors* in an attempt to find answers. Distrust and fear of making themselves known to Government agencies are also drivers toward *trusted advisors*.

The superordinate theme of *autonomy* cannot be disregarded. While *complexity* and *survival* are accepted as genuine challenges for SME owner/managers, an element of

autocracy and master/servant relationship existed amongst a number of participants. Participant owner/managers considered over-regulation unnecessary and presented a desire for employees and employers to negotiate without the need for outside interference.

6 DISCUSSION

6.1 Introduction

This Chapter discusses the research questions and examines the findings that emerged from this project. This is done with reference to related academic and professional literature.

The purpose of this research is to explore how small and medium enterprise (SME) owner/managers navigate employment-related legislative obligations. The research also investigates owner/manager awareness and use of resources available to them and their willingness to comply. Further, the research explores SME compliance strategies and perceived costs. Additionally, Stakeholders (Government, Unions and Employer Associations) were engaged to uncover their perceptions of owner/managers' experience with employment-related legislative compliance and these findings are also discussed.

Five superordinate themes emerged from this research and the following findings represent the experiences of owner/managers when complying with employment-related legislative obligations:

- *Effort*
- *Complexity*
- *Survival*
- *Trust*
- *Autonomy*

As provided in Figure 6-1, the central superordinate theme is *effort*. Additionally, potential causal relationships may exist across all five superordinate themes. *Effort* to comply with employment-related legislation is grounded in: the extent to which owner/managers 'assume' obligations, the priority assigned to obligations, and the level of *effort* invested in accessing and using available resources.

Both Stakeholder and owner/manager participants reported that employment-related legislation is complex. *Complexity* results in owner/managers' requiring the capability to research and comprehend the legislation before they are able to comply. Some owner/managers were found to be more able than others to achieve an adequate level of self-sufficiency through the use of 'no cost' Government resources. The research found that others will 'give up', spend more time trying to understand the legislation, ask 'non-expert' *trusted advisors*, or engage fee-for-service expertise.

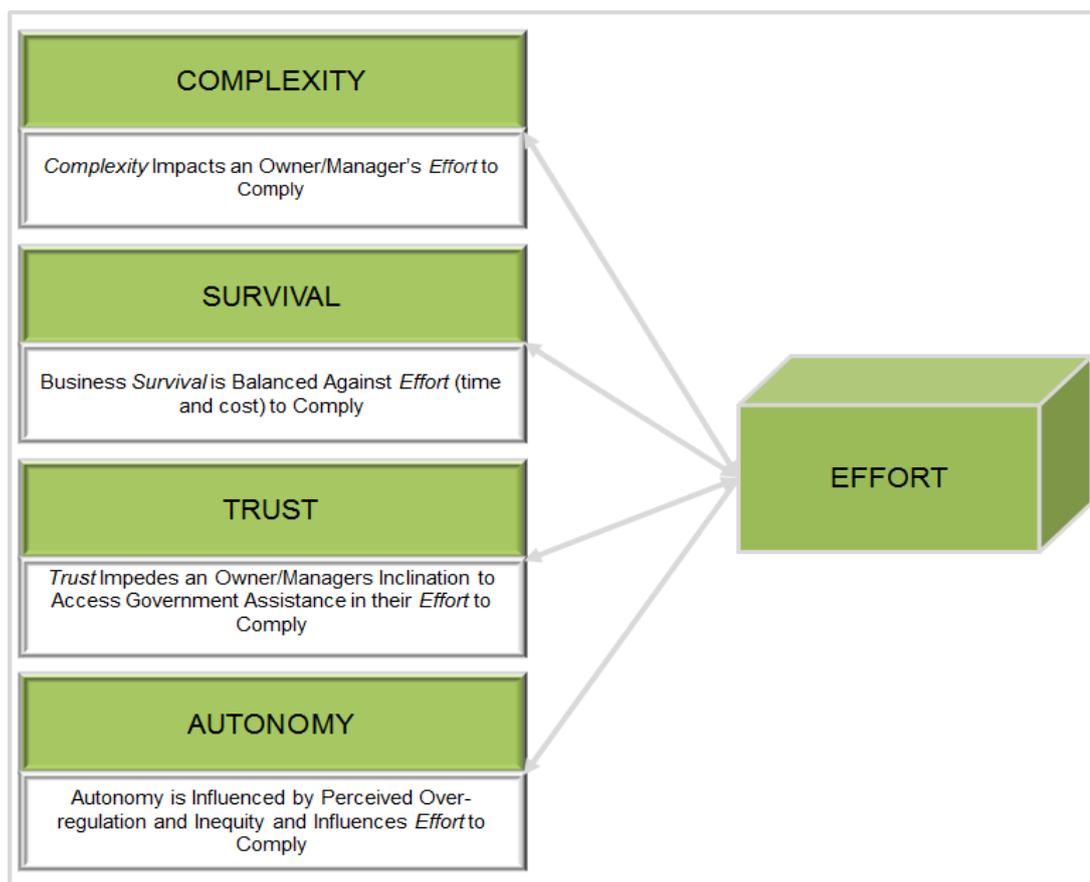


Figure 6-1: Potential Causal Relationships between Superordinate Themes

Owner/managers who expend time and/or money to achieve employment-related legislative compliance reported concerns related to business *survival*. Stakeholder and owner/manager participants recognised that time or cost away from the business can impact on revenue generation and ultimately profitability. While *complexity* was reported to detract from the usability of 'no cost' Government resources, owner/managers also referred to being reluctant to access these services for fear of attracting unwanted scrutiny from Government regulators such as WorkSafe WA, the WA Department of Commerce and the Fair Work Ombudsman (FWO). Research participants talked about *distrust* in Government agencies and a combination of fear and distrust led owner/managers to build reliance on 'non-expert' *trusted advisors*.

Owner/manager participants described experiences and past behaviours that reflected a desire for *autonomy* in the running of their business. Those participants considered over-regulation unnecessary and presented a preference for employees and employers to negotiate without the need for outside interference.

6.2 Responses to Research Questions

This research had the objective of determining responses to three research questions:

1. What advantages and challenges do SME owner/managers perceive in meeting their employment-related legislative obligations?

2. What actions are taken by SMEs to meet employment-related legislative obligations and what is their awareness and use of the support strategies available to them? Also, what costs do they associate with compliance?
3. What additional support services do SMEs want in order to support their compliance with employment-related legislative obligations?

The emergent findings of the research are presented in response to each research question and the superordinate themes are discussed with reference to literature applicable to SME compliance with employment-related legislative obligations.

6.2.1 Research Question 1

What advantages and challenges do SME owner/managers perceive in meeting their employment-related legislative obligations?

This research question sought to understand owner/managers' inclination to comply with employment-related legislation and also to explore their experiences in navigating obligations. The findings in relation to this research question are briefly summarised as:

1. Owner/managers generally want to comply with employment-related legislation but express challenges in balancing *effort* to comply with *survival* and the time and cost away from 'core' business activities.
2. Some owner/managers have more inherent capability than others to achieve self-sufficiency in meeting obligations using 'no cost' Government services and without engaging fee-for-service expertise.
3. Owner/managers prefer an autonomous employer/employee relationship, and dislike perceived over-regulation and external interference.

A response to this research question is now presented in further detail, and in the context of emergent superordinate themes.

6.2.1.1 Effort

Without a compelling event to increase the priority of employment-related legislative compliance, it was found that SME owner/managers fell into one of three categories:

1. I know I need to comply with something; however, I will wait until I am found to be non-compliant.
2. I know I need to comply with something; however, I don't know where to start.
3. I know I need to comply with something and I will go online and call someone so that I know what I need to do.

Most owner/manager participants reported being positively predisposed to achieving compliance with employment-related obligations. The level of *effort* to comply varied amongst participants and the findings identified that most owner/managers make a number of assumptions when determining their employment-related legislative obligations. Anderson and Ullah (2014, 337) refer to this as a small business owner's version of "common sense" as opposed to an unbiased objective decision making process.

Previous experience with a regulator such as WorkSafe WA or the FWO was found to increase an owner/manager's *effort* to comply. In turn, increased *effort* to comply had the consequence of optimising the use of support resources available from Government agencies, industry associations and other fee-for-service providers. The appearance of a potential two-way causal relationship between experience with a Government regulator, and owner/managers' *efforts* to comply with employment-related legislative obligations, could be further examined in future quantitative research.

Most owner/manager participants described their experience sourcing information to support their *efforts* to comply with employment-related legislative obligations, as challenging and time consuming. This research is supported by a United States study into the stages of small business growth and the changing nature of human resource practices as employee numbers increase (Labeledz & Berry 2011). The research reported that employment laws were disproportionately burdensome on smaller employers and supported arguments for legislation to be adjusted for SMEs to recognise that burden. An earlier study of United Kingdom retailers found that avoidance and non-compliance with employment regulations was the result of a lack of understanding and an inability to keep up to date (Schmidt et al. 2007). The researchers concluded that SMEs are considerably under-resourced in this regard.

This research found that participants 'assumed' obligations but were unclear as to where these assumptions had come from. Participants perceived that paying employees over the award rate of pay discharged them from a number of other employment-related obligations such as overtime and shift penalties. These participants often referred to being "*so far above the award rate*" that there was nothing else to be concerned with. This assumption also led owner/managers to be less vigilant with their employment-related legislative compliance *efforts*. United Kingdom studies into health and safety compliance by Vickers and colleagues (2005) supported the findings of this current research with regard to owner/managers' *efforts* to comply. Their 2005 research identified that the majority of small businesses were "reactors" when it came to health and safety legislative compliance. "Reactors" could be "minimalists" or "positive responders". Not unlike the findings of this research, "minimalists" were characterised as circumventing regulatory obligations, had limited awareness of the legislation, and applied a "common sense" approach to compliance.

Owner/manager participants in this research reported a 'common sense' approach to health and safety and expected employees to do the same. These participants generally underestimated the degree of employee risk; for example, some referred to working in commercial kitchens and applying "*hot wax*" as low risk activities. Prior Australian research supported this finding of indifference when it concluded that prosecution was a necessary deterrent to owner/manager unresponsiveness (Schofield, Reeve & McCallum 2009). Prosecutions under the *Occupational Safety and Health Act 1984* (WA) also support findings of SME health and safety compliance inaction. In the financial years 2009/10 and 2010/11, 80 per cent of prosecutions involved SMEs, and fines were substantial when compared to the size of employer and annual revenue (Department of Commerce 2011a). WorkSafe WA also reported the results of 225 workplace inspections carried out in the 2013/14 and

2014/15 financial years (Attard 2016). These inspections focused on restaurants and cafes and resulted in 1364 improvement notices being issued. The WorkSafe WA Acting Executive Director (Joe Attard) noted the restaurant and cafe sector had a high rate of workplace injuries citing that one thousand employees experienced lost time injuries over the five year period from 2009/10 to 2013/14 (Attard 2016). Consistent with the findings of Schofield, Reeve and McCallum (2009) and supported by Baldock et al (2006), Mr Attard went on to say, “We continue to firmly believe that raising awareness with proactive inspection campaigns is the best way in which to lessen the risk of work-related injury and illness.” (Attard 2016)

The exception to a ‘common sense’ approach to health and safety compliance was found in the Resource Sector where participants reported exercising extensive due diligence to meet obligations. These participants reported working in larger Resource organisations where there is a relatively higher incidence of death or permanent disability occurring from workplace accidents. Resource Sector participants also reported an awareness of personal liability for workplace incidents and accidents and talked about losing “*their house and everything they had worked for*”. Australian research on the relationship between pecuniary penalties and health and safety compliance in the mining industry (Gunningham 2007) is consistent with this finding of liability awareness in SMEs. Gunningham (2007) found a potential for large organisations to leverage complex organisational structures to create a bridge between executives and personal health and safety liability. Gunningham went on to observe that SME owner/managers were vulnerable to “substantial penalties” because the “corporate veil” cannot be broken down” (Gunningham 2007, 384).

In addition to Resource Sector participants who reported significant due diligence investment towards meeting health and safety obligations, this research found that owner/managers who experienced health and safety incidents or accidents in their workplace also described placing a higher priority on their compliance obligations. United Kingdom research by Fairman and Yapp (2005) found SME owner/managers considered they were compliant with health and safety legislation unless told otherwise. In the event that they were inspected by a Government regulator, they would implement the recommendations in a mechanistic manner before once again lapsing. Encouragingly, these United Kingdom findings are only partially consistent with this current research. Reporting a contrary outcome, owner/manager participants talked about going further than implementing the advice and recommendations provided by regulators such as WorkSafe WA or the FWO. Those owner/managers reported going on to embrace a more holistic and proactive approach to compliance, sourcing expert assistance, and implementing compliance as a ‘core’ business activity.

The majority of owner/manager participants had not taken steps to understand obligations such as unfair dismissal and discrimination, but reported applying a ‘common sense’ approach to these areas of employment-related legislation. This limited *effort* to become informed led to confusion and misinformation on matters such as parental leave and the ‘right to request’ flexibility of the *Fair Work Act 2009* (Cth) (FWA). Participants talked about the risk of ‘*going out of business*’ if multiple employees took parental leave. Most participants were also found to be unaware of their obligations to employees returning from parental leave.

Stakeholder participants perceived that levels of *effort* to comply were mixed amongst SMEs, and considered that owner/managers' knowledge extended to knowing the "*basics*" or thinking they were doing the right thing. Stakeholder participants perceived that few owner/managers flout employment-related legislative obligations, but contended that more *effort* was required. Stakeholder participants also reported that Government audits and pecuniary penalties influence an owner/manager's *efforts* to comply. Earlier United Kingdom research into the enforcement of the national minimum wage also found that regulatory inspection and pecuniary penalties aided compliance (Croucher & White 2007). The statutory national minimum wage (NMW) came into effect on 1 April 1999 and this was the first time a minimum rate had been mandated in the United Kingdom. Croucher & White (2007) examined the effectiveness of a regulatory model with its combination of self-regulation and enforcement. They found that only a minority of employees within their sample were paid correctly and that employers took adverse action against employees who reported non-compliance with the NMW. Without a mechanism to ensure arrears were paid and adequate sanctions, employers did not remedy their non-compliance (Croucher & White 2007).

Confidence to comply with employment-related legislation was mixed amongst owner/manager participants and this was as anticipated by Stakeholder interviewees. Some owner/managers, who displayed limited understanding of their obligations, stated they were confident in their knowledge of and compliance with employment-related legislative obligations. Others were aware that they had not invested in employment-related legislative compliance and these participants described themselves as being under-confident and anxious at times. Prior research of Australian nursing home directors considered the role of managerial self-efficacy with legislative compliance (Jenkins 1994). Jenkins found that a positive rather than a negative regulatory approach could improve employers' compliance *efforts*, confidence, and motivation to comply. Jenkins also found that compliance is generally complex and pecuniary penalties will have little effect on employers who are not technically competent to comply. Nonetheless, regulatory inspections are necessary but with "nurturant cultivation" on the part of the regulators in order to support, educate and improve employer confidence (Jenkins 1994, 86).

Making assumptions, priorities, and optimisation of support resources were subordinate themes to *effort*. Supported by prior research, this research identified that *assumptions* are made by owner/managers who do not expend sufficient *effort* to research employment-related compliance obligations. The level of *effort* to comply is also influenced by *priorities* and *priorities* are influenced by factors such as personal liability and prior audit experience with a Government regulator. An increased *effort* to comply also resulted in owner/managers' '*discovering*' resources such as Government websites, industry associations and industrial relations consultants and this led to an *optimisation of support resources*.

6.2.1.2 *Survival*

In reporting time and/or cost to comply with employment-related legislative obligations, owner/manager participants referred to business *survival* either directly or indirectly.

Stakeholders also recognised the importance of business *survival* and commented that owner/managers balanced *efforts* to comply against the risk of being found to be non-compliant.

If we accept that an SME owner/manager's time is finite and business *survival* is an intrinsic driver, then researching and interpreting complex information takes time. This finding was supported by research into small business owner experience with Government regulations by the Australian Government Productivity Commission (2013). The report found the dichotomy between time and *complexity* and resulted in the following conclusions:

1. Small business owners are time poor as a result of their volume of work.
2. They also have less time to read, interpret and absorb regulatory requirements.
3. They generally need help interpreting regulations.
4. They have a higher compliance cost.
5. Regulations and associated guidance material require simplification.

(Australian Government Productivity Commission 2013)

A study released by the United States Small Business Administration Office of Advocacy reported that cost and time to comply with regulations generally, are significant and disproportionate for small businesses when compared to large business (Warfield & Stark-Jones 2012). United Kingdom research found that SMEs do not have HR personnel and find it costly to comply with employment-related obligations (Ullah & Smith 2015). Participants to Ullah and Smith's research talked about time and cost to comply and also described inhibitors to employing staff outside of their immediate family. These inhibitors were described as: *complexity* and paperwork, employment costs, employee rights, parental entitlements, recession, dismissal and lack of empathy on behalf of Government legislators (Ullah & Smith 2015). Parker and colleagues (2012; 2014) also refer to studies of small business owner/managers that found personnel-related matters take a back seat to time invested in accounting, production, finance, and marketing tasks.

SME owner/manager participants stated that they were apprehensive about business *survival* and set *priorities* on 'core' business activities. They described a need to spend time making money and sought to avoid costs that further reduced a marginal business position. This finding supports an earlier United Kingdom study by Anderson and Ullah (2014) who examined SMEs' reluctance to employ staff in order to grow. Owner/managers reported an unwillingness to increase their employment-related compliance obligations and described being anxious about not having the time, resources or skills to comply. Specific concerns related to anti-discriminatory, disciplinary and dismissal obligations because these were seen as restrictive to achieving an effective workforce. South African research also found that SMEs were frustrated with the time and cost imposed by employment-related regulation (Bischoff & Wood 2013), and owner/managers stated they would stay small to avoid the regulatory scrutiny directed at large business. Harris (2002) found that SME owner/managers considered the impact of time and cost to comply with employment-related legislative obligations to be a risk to business *survival*.

Owner/manager participants talked about balancing *effort* to comply with the risk of being 'caught' by Government regulatory agencies. Participants reported setting 'core' business activities as a priority because these activities raised revenue and supported profitability. Although participants were aware that an industrial audit could result in the need to back-pay wages and possibly result in pecuniary penalties, business *survival* was an immediate imperative while an audit was only a future possibility. Nonetheless, if the 'future possibility' became a real probability by virtue of the FWO targeting a region or industry in close proximity, owner/managers reported increasing the priority they would assign to employment-related legislative compliance. All participants talked about implementing compliance strategies that were 'reasonable', but these strategies did not extend to every "box being ticked".

SMEs that are audited by the FWO and found to be non-compliant in the application of a modern award or enterprise agreement, are ordered to remedy their mistakes and back-pay wages and other entitlements. Nonetheless the ratio of Government inspectors is small when compared to the 832,903 'employing' SMEs trading in Australia as at 30 June 2015 (Australian Bureau of Statistics 2016b). Additionally Union representation is limited in SMEs (Gialuisi & Coetzer 2013), and Union Stakeholder participants reported that they rarely visit SME employers or employees. Given these existent conditions, the risk balancing compliance approach reported by owner/manager participants is perhaps understandable.

Previous research identified limitations for SMEs who elect to flout their compliance obligations and choose to apply less than the minimum terms and conditions of employment. This limitation is particularly evident in times when demand for talent outweighs supply and non-compliant employers encounter acquisition and retention challenges. A Canadian study examined factors contributing to voluntary and involuntary turnover in the context of effective human resource practices in SMEs (Wagar & Rondeau 2006). While this study went further than employment-related regulatory compliance, the results suggested that HR practices influence employee retention. A second disadvantage to risk balanced employment-related legislative compliance, is the potential for sub optimal business productivity. Muse and colleagues (2005) studied over 4,000 small businesses in the United States to test the relationship between employee commitment and business performance. While results were mixed with regard to a consistent positive relationship between employee commitment and organisational productivity, there were sufficient findings to support the proposition that employee commitment is a contributor to organisational competitiveness and success.

North (2016) reflected on SME compliance in the context of business reputation. North found that, unlike large businesses, small businesses often served a local market and became part of a community. North observed, "...the SME owner's personal reputation matters, as does how she treats her employees, who may be family, friends or neighbours" (North 2016, 12). There are also financial implications associated with balancing compliance with the risk of being 'caught'. If and when an SME is found to be non-compliant, the owner/manager needs to find the funds to back-pay wages and entitlements and this impost could lead to bankruptcy (Hardy, Howe & Cooney 2013).

In addition to a 'wait and see' approach to employment-related legislative compliance, owner/manager participants reported using creative 'workarounds' to avoid or minimise compliance. These strategies included: employing workers as 'casuals', dismissing employees within their probationary period, fabricating redundancy, and covertly discriminating during recruitment. While knowledge of the intricacies of the unfair dismissal provisions of the legislation was limited, all owner/manager participants were aware that employees were ineligible to lodge a claim for unfair dismissal if they had less than six months service (15 employees or more) or twelve months' service (less than 15 employees).

While there is limited research on the use (or abuse) of the probation period in employment (Benjamin et al. 2010; Tantri 2012), exploitation of casual or non-permanent employment has been well researched. The term 'precarious employment' has been discussed since the late 1990s and Underhill and Fernando (1998, 43) refer to this as "non-standard employment, part-time, casual, or contract work". Studies of precarious employment have identified adverse outcomes for employees (Chan 2013; Cushen & Thompson 2016; Wilson & Ebert 2013) and also reported health and safety challenges for workers (De Moortel et al. 2014; Giraud et al. 2016; Moscone et al. 2016). Research by Rawling (2015) reported that there were up to four million Australians in non-permanent employment. Rawling also referenced a report commissioned by the Australian Council of Trade Unions (ACTU) entitled, "Lives on Hold: Unlocking the Potential of Australia's Workforce – The Report of the Independent Inquiry into Insecure Work in Australia", that called for greater protections for employees engaged in casual, part-time and other forms of non-permanent employment. Laird and colleagues (2011) found that small business owners seek to avoid the cost of employment-related legislative obligations through precarious employment and these findings are supported by the 'workarounds' reported in this current research.

When an unfair dismissal claim was lodged by an employee, owner/managers described settling claims rather than risking further time and effort defending these claims "*in court*". Owner/managers did not believe they had the skills to defend these claims and were reluctant to expend uncapped funds engaging an employment lawyer. Participants talked about 'go away money' as a necessary part of business and balanced the payment of money against the downside of having a disruptive employee in the close proximity of an SME environment. Howe (2013, 127) described 'go away money' as "...the practice of employers to settle marginal or on occasion what they perceive as groundless unfair dismissal claims". Forsyth and Stewart (2012, 33) found that the practice of settling potentially vexatious claims for unfair dismissal has continued under the FWA and paying 'go away money' can be "...simply a good business decision". Collier (2011) favours a 'no fault' dismissal system, contending that employees misuse the current legislation to claim unfair dismissal as a matter of course. Under a 'no fault' dismissal system, Collier reports that the employee may still receive their period of notice and an "assistance package", but the dismissal will not be judged 'fair' or 'unfair'.

Research by the Australian Mines and Metals Association (2016) reported that their members (resource Sector employers) continue to pay 'go away money' in preference to the

time and cost of going to arbitration. Stakeholder and employer input into a review of the workplace relations system by the Australian Government Productivity Commission (2015) recognised concerns about 'go away money'. As a result the report recommended a two-stage test which would first require the Fair Work Commission to assess if there were a valid reason for dismissal before lodging the matter with the employer. The report also recommended a review of what constitutes 'unfair'. The existence of 'go away money' is supported by this current research and there is an opportunity for research to explore this matter further (Hannan 2011; Heffernan 2012).

Owner/managers consider the safety of their business, themselves, and their family when making decisions on the *effort* to invest in employment-related legislative compliance. Owner/managers also perceive time and money spent on 'non-core' business activities to have a negative impact on *survival*. Further, Stakeholders perceived that revenue, profit and business *survival* were *priorities* for owner/managers, and SMEs will not spend more money on 'non-core' business activities than they need to.

Concern for business *survival* is a serious reality for SME owner/managers. Data from the Australian Bureau of Statistics and published by the Small Business Development Corporation (2016a) reported that only 52 per cent of small businesses (between one and 19 employees) registered in June 2011 were still in business in June 2015. The survival rate for medium-sized businesses with between 20 and 199 employees was only 24 per cent over the same period. In a study into environmental initiatives in Western Australia (WA), Walker and Redmond (2014) concluded that SMEs will engage in change if the return on investment is established, but business *survival* is the priority. A United Kingdom case study into employment-related regulatory compliance also found that business *survival* conflicted with the time and commitment to comply with statutory regulations (Harris 2002). One small business owner in this study by Harris described how time on HR matters took them away "...from other activities that are more obviously essential to business survival" (Harris 2002, 302).

It is perhaps not an 'either/or' decision for owner/managers to *survive* or to comply with employment-related legislative obligations, and there is research to support that compliance and *survival* are not necessarily conflicting goals. Mankelow (2008) interviewed 10 owner/managers in the New South Wales Hunter Region to establish what (if anything) motivates small business owners to be socially responsible in the management of their employees. Six of the 10 participants reported that they invested in their people (through strategies such as flexible working hours, on the job training, etc.) with a view to achieving long-term business *survival*. These managers shared a view that they needed to gain employees' loyalty in order to achieve long-term *survival*. Mankelow's (2008) research supports a United States study by Holoviak and De Cenzo (1982) that found a positive correlation between effective employee relations and increased business *survival*. Holoviak and De Cenzo named employee security, equality, sound leadership, employee participation and career opportunities as factors that could support a strong business environment.

Panagiotakopoulos (2011) examined the behaviours and attitudes of European SMEs toward investment in employees, and the correlation between employee investment and business *survival*. While the research focused on investment in human resource development, Panagiotakopoulos found that SMEs often concentrate on short term *survival* instead of investing in longer term sustainability through motivating and developing employees. Likewise, United Kingdom research into environmental compliance by SMEs in the manufacturing sector identified a focus on *survival* and reluctance by SME owner/managers to invest in regulatory compliance that took time and money away from investment in 'core' business (Lynch-Wood & Williamson 2014).

Stakeholder participants' perception that SMEs prioritise 'core' business activities and *survival* over employment-related legislative compliance is supported by research. Anderson and Russell (2011) cited Vincent Keter's term "regulation inflation" when they discussed legislative obligations as distractions to SME *survival* in the United Kingdom. Anderson and Russell presented a model for self-regulation for small business but acknowledged that this approach was not without challenges. These challenges included the need for internal monitoring and this could, in itself, become a regulatory overhead. Research by Kotey and Sorensen (2014) also found that time to comply with regulations was a barrier to innovation in small businesses in rural Australia. However, Kotey and Sorensen acknowledged that regulatory compliance was only one factor detracting from innovation and other factors extended to management competence, lack of access to finance, skill shortages and political uncertainty.

Conflicting priorities are everyday occurrences in business; however, these challenges are perhaps more acute for an SME. While it is reasonable to expect an SME owner/manager to comply with employment-related obligations, the *complexity* of these obligations may require a disproportionate time and cost investment. Nonetheless, SMEs are able to make choices on how they meet employment-related legislative obligations and these choices include the ability to engage internal or external expertise. Yet Stakeholder participants provided a perception that SMEs are well-known for steering away from activities that incur additional cost and will avoid paying for external assistance or employing in-house experts. Owner/manager participants confirmed this sentiment and referred to additional time and cost as inhibitors to *survival*.

The subordinate themes to *survival* were: *balancing effort and risk* and *compliance costs*. This research supports the findings of prior studies by determining that SMEs take a balanced view of the level of *effort* they invest in employment-related legislative compliance. The level of *effort* is balanced against the risk of being found to be non-compliant, and also the proximity of a Government audit. The time and cost to comply is also a factor in balancing risk, however, there needs to be recognition that some SMEs are more able than others to manage the complexities of employment-related legislation. Those who are unable to manage independently or through accessing 'no cost' Government resources, will either 'give up' or make a balanced decision to engage fee-for-service expert providers.

6.2.1.3 *Autonomy*

Autonomy emerged from the subordinate themes of: *dynamics of the SME employer/employee relationship*, and *perceived unfairness and over-regulation*. Owner/manager participants conveyed a desire to self-regulate and this inclination for control is supported by prior research that found *autonomy* and independence as motivators to become self-employed (to become the employer instead of the employee) (Blackburn, Hart & Wainwright 2013; Greenberger & Sexton 1988). Owner/managers considered that employer and employee agreements could be reached between the parties and without external interference. At the same time, owner/manager participants failed to adequately recognise the power gap that exists between themselves and their employees.

Owner/manager participants described over-regulation as an inhibitor to working with employees to achieve a business environment that was a 'win-win' for the employer and the employee. Those participants said that employers and employees work on a 'give and take' basis and are able to work things out between them. Outside interference was said to be unnecessary and unappreciated. Owner/manager participants also described employment-related legislation as inequitable and biased toward employees.

Owner/manager participants relied on the closeness of the employer/employee relationship in seeking to create the employment 'rules and regulations'. Participants described a 'give and take' environment but still held a view that they were the ultimate decision maker. Even participants who talked about employees as 'friends', described the need to set expectations and establish what they required from employees. When declaring the employer/employee relationship as sufficient to reach agreement on the terms and conditions of employment, owner/managers failed to recognise the potential for a power imbalance to exist between the parties.

In seeking to achieve the *autonomy* to run their business without external regulation, owner/managers did not reflect on the potential power imbalance between the employer and the employee. Industrial legislation attempts to fetter the common law master/servant relationship and provide greater protection and security for employees. The employer/employee power balance has been especially topical in Australia over the last decade. WorkChoices was considered to be pro-employer and had been described as a return to a master/servant relationship (Gardiner 2007). WorkChoices (replaced by the FWA in 2009) provided the ability for employers to negotiate directly with employees and this internal *autonomy* attracted significant criticism from Unions and the Australian Labor Party (ALP).

Employer *autonomy* without adequate statutory rigour can be problematic for employees who are not in a position to negotiate 'fair' employment terms with their employer. Research by Cockfield and colleagues (2011) found that WorkChoices had a negative impact on low paid workers in Victoria and this was demonstrated by an increase in unpaid work and a decrease in workplace entitlements. A study of health and safety behaviours also recognised the limited bargaining power of employees in SMEs (Eakin & Maceachen 1998) while research into employer/employee relationships found SME owner/managers seek 'control' over their work environment (Ntalianis et al. 2015). Atkinson and colleagues

(2016) also found that SME employees lack the ability to independently negotiate favourable employment conditions.

All research participants (both Stakeholders and owner/managers) referred to the close interpersonal relationships that form in SMEs. However, participants also described the downside of informality when employer/employee relationships break down. This finding supports prior research that established informality of SME relationships can range from wonderful to dismal (Atkinson 2007). Atkinson conducted 41 employer/employee interviews across three SMEs in the United Kingdom to inquire into the connection between employment relationships and individual performance. The results found that a relational psychological contract between the employer and the employee could lead to high work performance but also quoted employees who described a work environment that was sometimes “fantastic, and sometimes... dreadful” (Atkinson 2007, 515).

Owner/manager participants described the rigour required by employment-related legislation as unsuited to an SME environment. Procedural fairness required by the unfair dismissal provisions of the FWA were criticised as being unworkable in the close proximity of a small business. Participants talked about “*three warnings*” for poor performance or behaviour perhaps working in a large organisation where anonymity prevailed, but considered this level of formality impractical and uncomfortable in an SME environment.

Initial coding of owner/manager transcripts identified data that supported the existence of ‘paternalism’ amongst participants. Owner/managers talked about “*helping*” unsuitable employees resign from the business and described these discussions as being in the best interests of the employee. Owner/managers also referred to workplace flexibility as a mutual benefit but went on to describe examples of these arrangements that were employer centred and non-compliant with the FWA.

Research has found that SME owner/managers will adapt their behaviours depending upon on the value they place on the employee (Bacon & Hoque 2005). This value generally translates to the skill level of the employee and renders unskilled employees more susceptible to owner/managers who “assert their prerogative” (Bacon & Hoque 2005, 1990). A conference paper by Zhang (2010) supports these findings and provides examples of exploitive behaviour by owner/managers who employ migrant workers in Australia. Ms Zhang works with migrant workers and provides the following account of her experience:

“Lots of women have lost their jobs but their boss didn't pay their entitlements. Seven Vietnamese women were working in a Nails shop. They complained to us that the boss always asked them to do the housework at her home, and to look after her kids. The boss was not paying them the correct rate of pay either. Five of the women wrote to the boss then confronted her about the money she owed them. An argument broke out and the boss went to the police accusing one of the women of hitting her. The worker now has a temporary Apprehended Violence Order against her and is terrified.” (Zhang 2010, 70)

Edwards and colleagues (2006) identified that employer paternalism can be characterised as autocracy when employees are low skilled. However, Edwards and colleagues also found that

positive economic factors relating to demand and supply could influence owner/managers' behaviour and can consequently increase the power of the employee. Nonetheless, in times of high unemployment, Wolfe and McGinn (2005) reflect on the relative negotiation position of the employer and the low skilled employee. Wolfe and McGinn identify the employer as the party with the power in a weak economy because they have the ability to offer employment, salary, and security. Alternatively, the employee is in a competitive environment and there are many who would take their job. For this reason the employee may accept terms that favour the more powerful party, the employer (Wolfe and McGinn 2005).

A more positive perspective on paternalism was discussed by Hyman and colleagues (2008). Hyman and colleagues used semi-structured interviews to better understand the operation of human resource management in SMEs. Their case study approach found that employees felt empowered, motivated and generally satisfied in a "benevolent paternalistic" environment. In these circumstances, employees referred to 'give and take' and enjoyed flexibility that could be hindered by a more regulated environment. Earlier United Kingdom research by Edwards, Ram and Black (2004) found that SME employees enjoyed a flexible work environment characterised by time off work to be at home for a delivery or to care for a sick child. Edwards, Ram and Black found that a transition from informality to formality could jeopardise this casual approach to workplace flexibility and may be detrimental to both employer and employees. Research by United States academics Tsai, Sengupta and Edwards (2007) found that employee loyalty generally exists in SMEs, and owner/manager control is often considered relevant and fit for purpose. Factors such as close involvement by the owner/manager, working alongside the owner/manager and observation of the owner/manager working long hours, contributed to loyalty and also employee satisfaction.

Owner/manager participants shared a desire to negotiate directly with employees and to operate without external regulation. Stakeholder participants also recognised this preference for self-regulation amongst SMEs. Prior research confirms a desire for employment-related *autonomy* by SME owner/managers and Jack and colleagues (2006) referred to an uneasy relationship between small business and statutory regulations. Disdain and frustration toward employment regulation was a common theme in a 2014 study of over 2,000 small business owners in the United Kingdom (Anderson & Ullah 2014). Many participants reported they ignored the legislation or just did their own thing. The concept of 'common sense' featured frequently in Anderson and Ullah's research, along with references to perceived inequality and employee bias by small business owner participants to the research. An earlier study by Harris (2002) also supports this current research and found that owner/managers perceive employment-regulation as an inhibitor to competitiveness and a drain on their resources.

Owner/manager participants in the Resource Sector were critical of external interference and this extended to Union control. Specifically, participants referred to interference and undue Union influence during enterprise agreement negotiation. Retail and Hospitality Sector participants were equally critical of perceived Union interference and condemned what they considered to be Union "*control*" of penalty rates for weekends and public holidays. Executive Director of the Council of Small Business of Australia (COSBOA), Peter Strong, also condemned the ACTU's drive on part-time workplace flexibility that could see

disputes reaching the Fair Work Commission if owner/managers rejected an employee's 'right to request' (Keating 2015).

Unfair and employee biased legislation attracted criticism by owner/manager participants. Those participants talked about unscrupulous employee behaviour that rendered them powerless as employers. Examples of unacceptable employee behaviour included false unfair dismissal and worker's compensation claims, and an abuse of personal leave. In discussing a perception of employee biased employment legislation, Ullah and Smith (2015, 168) state that SMEs consider themselves "victims of discriminatory Government policies and employment practices". Lewis and colleagues (2015) reported similar findings in their study of small business owners in New South Wales and Victoria. Lewis and colleagues found that owner/managers perceive employment-related legislation provides employees with greater protections and rights than were afforded to the employer and included responses such as, "employees who think they are above the law" (Lewis et al. 2015, 17).

Stakeholder participants acknowledged owner/managers' desire to self-govern and most concluded that this could lead to the industrial wellbeing of SME employees being compromised. Those Stakeholder participants talked about the marginal position of an employee in a small or medium business and perceived that employees would not pursue their rights until they were no longer employed by the SME. Stakeholders were generally critical of the *autonomy* sought by owner/managers but did accept that "*red tape*" was a burden.

Stakeholders also referred to the perceived personal relationship between SME owner/managers and their employees. Owner/managers were considered to rely on these personal relationships to avoid or dilute their obligations in some cases. Owner/managers were said to operate on the basis that employees could rely on them to do the 'right thing' without the need for legislation.

Statutory employment-related legislation is said to 'fetter' the master/servant relationship at common law and media reports seem to support a view that Union and ALP commentators consider the FWA goes some way to redressing the perceived pro-employer attributes of WorkChoices. Owner/managers describe the FWA as employee biased legislation which is open to exploitation. Those participants also reported being anxious about over-regulation and described employment-related legislative obligations as overwhelming. Stakeholder participants recognise the impact of regulation on SMEs and most report employment legislative compliance as being outside the capability of the average owner/manager. Regardless, Stakeholders generally considered that owner/managers could contribute more *effort* toward compliance without compromising their business *survival*.

6.2.2 Research Question 2

What actions are taken by SMEs to meet employment-related legislative obligations and what is their awareness and use of the support strategies available to them? Also, what costs do they associate with compliance?

This research question sought to explore the actions taken by owner/managers to meet their employment-related legislative obligations and, further, to understand their awareness and use of available resources. An understanding of the perceived cost of compliance was also sought. The findings in relation to this research question are briefly summarised as:

1. Owner/managers prioritise the *effort* they apply to compliance with employment-related obligations and factors such as prior audits by regulators or personal liability can influence and change the priority.
2. *Complexity* of employment-related legislation impacts on the usability of 'no cost' Government support and resources and this leads owner/managers to 'give up', invest more time trying to understand, access *trusted advisors*, or engage internal or external expertise. There is a cost to comply regardless of the actions or inactions by owner/managers.
3. Owner/managers are distrustful of Government agencies that perform a dual role of support provider and regulator and this can lead these owner/managers to seek assistance from 'non-expert' but *trusted advisors*.

A response to this research question is now presented in further detail, and in the context of emergent superordinate themes.

6.2.2.1 *Effort*

Prior experience with Government regulators such as WorkSafe WA or the FWO were reported to increase owner/managers' *efforts* to comply with employment-related legislative obligations. Participants who had been audited by one or more of these agencies talked about changes they had subsequently made to their compliance *efforts* and the steps they now take to meet their obligations. In international studies, a reduced focus on employment-related regulation in Ghana and a decrease in Government inspectors, was found to create an increase in non-compliance by employers (Debrah & Mmieh 2009). In turn, it was reported that employers gained power and employees lost power in relation to employment conditions. Nonetheless, Debrah and Mmieh found that SME employees could retain a unique position of power if they were considered valuable to the success of the business.

Owner/manager participants who invested *effort* to comply with employment-related legislation were more aware of support resources available to them. These participants reported using resources such as Government websites and hotlines, industry associations, industrial relations consultants (large and small) and employment lawyers. Nonetheless, owner/managers who reported knowledge and use of Government support resources described mixed experiences with these services. The majority talked about experiencing confusion and frustration in the use of Government services and explained that they responded in one of three ways. Some stated that they 'gave up', others continued to search until they found an answer and others engaged expert resources.

Knowledge of industry associations was varied amongst owner/manager participants. Those who invested time to comply with employment-related legislative obligations were

members of industry associations and able to access expert resources at what was stated to be a relatively small expense. Other participants had no knowledge of these resources and were unaware of the services available from an industry association. Industry associations would appear to have scope to become a more formal partner to SMEs by creating a bridge between owner/managers and the Government. In an Australian study into SME compliance with corporate regulations, it was found that most participants were unfamiliar with the extent of their regulatory business obligations (Kumudini et al. 2014). Kumudini and colleagues research recommended further investigation into the potential for a partnership model which would see owner/managers, regulators and industry/Employer Associations working together toward educating and achieving legislative compliance amongst SMEs.

A limited number of owner/manager participants extended their *effort* to comply with the engagement of employment lawyers and industrial relations consultants, and a few employed in-house experts in the form of health and safety advisors and human resource personnel. Most of those participants were from the Resource Sector or were medium-sized businesses. Without the economies of scale available to them (Barrett & Mayson 2007), some smaller participant owner/managers had collaborated with other small businesses to engage specialised fee-for-service expertise.

For the most part, participants who indicated that they did not have the ability to research, interpret and apply the legislation effectively were nonetheless aware that they did have other support strategies available to them. These strategies generally included (a) additional time to invest in 'no cost' Government resources to learn and distil the required information; (b) accessing fee-for-service experts; or (c) accessing family members, friends, accountants, and their network in general. The extent to which these resources were accessed was determined by the owner/manager's inclination and *effort* to comply.

6.2.2.2 Complexity

Complexity was reported to detract from the usability of Government 'no cost' resources and impeded owner/managers' ability to effectively achieve compliance without access to fee-for-service providers. When asked, owner/manager participants reported a desire for support services that are simple to use and this included resources customised for SMEs. All Stakeholder participants recognised that the level of expertise required to correctly interpret and apply employment-related legislation was often outside the capability of an SME owner/manager. These findings are consistent with a study of 391 SMEs in New South Wales and Victoria regarding their experiences with Government regulatory compliance (Lewis et al. 2015). Lewis and colleagues found that industrial relations legislative compliance was referred to most frequently by participants in relation to the cost of compliance. The researchers also identified that the volume of compliance support material was significant but the quality was poor. This led to increased time to find information and this additional time translated to cost.

Owner/manager participants who accessed online and hotline employment-related Government support services described difficulties sourcing information. The experiences reported by owner/manager participants included not knowing the questions to ask and

this was in part due to the use of “*overly legalistic*” wording and unfamiliar terms such as ‘modern award’ and ‘constitutional corporation’. The dilemma that prevailed was that Government agencies required ‘technical’ information in order to provide an accurate answer to an owner/manager’s question; however, the owner/manager was often unable to provide the requested ‘technical’ information.

An Australian study examined enterprise agreements between 1993 and 2011 and reported that one of the objectives of a move to enterprise agreements was desire to avoid the complex wording and interpretation of awards (Sutherland 2013). Sutherland’s research examined enterprise agreements over an 18 year period and found that little had been achieved in producing agreements that were devoid of jargon and could be easily read. Sutherland provided examples of the jargon found in her research and referenced the use of words such as “blackban”, “grandparented”, “wildcat”, “gratia”, and “officio”; none of which can be considered as ‘ordinary’ words.

This current thesis examined a randomly selected modern award to survey the content for jargon (refer Appendix H for a copy of the Banking, Finance and Insurance Modern Award 2010). While the jargon in the Banking, Finance and Insurance Modern Award 2010 is different to the findings of Sutherland’s research, this extract from the “Definitions and Interpretation” section of this award (Fair Work Commission 2016b) demonstrates the potential difficulties that could be experienced by owner/managers:

Agreement-based transitional instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

Award-based transitional instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

Default fund employee means an employee who has no chosen fund within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cth)

Defined benefit member has the meaning given by the Superannuation Guarantee

Division 2B State award has the meaning in Schedule 3A of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

Owner/manager participants reported feeling frustrated in their engagement with Government agencies and this extended to online and hotline interactions. Government Stakeholder participants acknowledged the challenges experienced by owner/managers accessing their services. These Government Stakeholders described their own dilemma which was one of synthesising thousands of lines of “*non-vanilla*” complex legislation into an effective online resource. Union and Employer Association Stakeholder participants described Government resources as “*not fit for purpose*” but recognised that *complexity* of employment-related legislation contributed to this position.

Inconsistency of employment-related advice from Government agencies was a source of frustration for owner/manager participants. Contradictory employment-related advice was also referred to by Union and Employer Association participants. Owner/managers described

seeking a definitive answer and not being able to achieve this outcome. Those participants also talked about getting one answer one day from a Government agency and then a conflicting answer the next.

Owner/manager participants who were aware of pecuniary penalties for non-compliance described their frustration at being exposed to penalties without the necessary support and resources to comply. Nonetheless, *complexity* of employment-related legislation does not always allow an answer that is “*black or white*”. It can also be the ‘precision’ of the legislation that creates a situation where the same question is asked twice yet different answers may apply.

The availability of information for SMEs is not contested. A search of the FWO and Fair Work Commission websites produced multiple references and supporting material. However, it is arguably the magnitude of information that is challenging and that is compounded by the complexity of turning that information into answers for owner/managers. This research found that owner/managers wanted information that was “*black or white*” and this does not appear possible if owner/managers’ support resources are limited to Government websites. A visit to the “small business employer” section of the Fair Work Commission website provided the following guidance for owner/managers (Fair Work Commission 2015):

“What the Commission can do for small business employers:

1. Help resolve issues, disputes and dismissals;
2. Make or vary enterprise agreements;
3. Tell you if a right of entry permit is valid;
4. Help you find an agreement or find an award;
5. Provide resources in languages other than English.

What the Commission cannot do for small business employers:

1. Give advice on exercising rights and obligations;
2. Tell you which award or agreement applies to your business;
3. Tell you what you need to pay your employees”.

(Fair Work Commission 2015)

The message this Fair Work Commission website could be considered to convey to an owner/manager is, “we will help you find an agreement or find an award” but we will not, “tell you which award or agreement applies to your business”.

Stakeholder participants reported that the most owner/managers’ interactions with Government agencies were via websites. Nonetheless, Government Stakeholders explained that the website may not be the best option if checking the rates of pay under the modern awards. The primary online tool for checking rates of pay under the modern awards is the ‘pay calculator’ function on the FWO website (Appendix I provides an exemplar of the steps involved in using this tool). Appendix I represents only a sub-set of the ‘pay calculator’ tool as the full process extends to 30 screens. Nonetheless, the example provided in Appendix I is an indicator of the *complexity* of this function and illustrates some of the challenges

experienced by owner/managers who access this facility. With that said, it must be recognised that Government agencies have a significant challenge in achieving a simple delivery of complex information to a wide range of employer and employee customers. It is also acknowledged that the FWO has embarked on SME consultation initiatives and these joint enterprises can only continue to improve Government support resources (Fair Work Ombudsman 2015c).

Many owner/manager participants were unaware of or confused by jurisdictional coverage. When asked, most Federal employer participants referred to applying State awards and accessing Wageline (and not the FWO) for award updates and pay rates. Participants who were aware of dual jurisdiction in WA understood which industrial relations legislation applied to their business; however, expressed irritation with the *complexity* of the FWA and described aspects of modern awards and the National Employment Standard (NES) as “*confusing*”. These findings support a quantitative study of SMEs in New South Wales and Victoria where interviewees quoted jurisdictional confusion and the *complexity* of the workplace relations system as causes of frustration (Lewis et al. 2015). In the verbatim comments, one participant to the research by Lewis and colleagues stated there was an expectation for small business owners to be, “more knowledgeable than the Commissioner for Taxation, the Director of Workplace relations, etc. all at the same time” (Lewis et al. 2015, 20).

Reliance on fee-for-service resources was found to be an indirect outcome of the *complexity* of employment-related legislation. Owner/managers who unsuccessfully engaged with ‘no cost’ Government support resources reported, ‘giving up’, trying again, or engaging expert resources. Unfortunately participants who reported ‘giving up’ instead of investing additional time and/or money to achieve compliance are not achieving the outcome Stakeholders or employees desire.

Running an SME is the responsibility of the owner/manager and employment-related legislative compliance is an integral part of business regulation. Nonetheless legislation is complex and owner/managers’ time is finite. ‘Free’ resources are available from Government agencies and these are provided online or via a hotline. A combination of *complexity* of the legislation and distrust in Government agencies detracts from the use of these support resources and this can drive owner/managers to ‘give up’, invest more time trying to understand, or engage paid fee-for-service expertise.

The subordinate themes to *complexity* are: *complexity impedes usability of Government resources*, *complexity necessitates a fee-for-service* and *owner/managers want simplicity*. The legalistic nature of employment-related legislation was found to impede owner/manager participants’ being able to frame the question they needed answered. They found difficulty answering questions asked by online Government websites or hotlines, yet, agencies required the answer in order to provide accurate advice. A desire for a definitive “*black or white*” answer was a frustration for owner/manager participants and this included a perception that inconsistent advice was provided by Government personnel. Owner/managers who were unable to achieve success by way of accessing Government support resources, could access fee-for-service assistance. However, whether or not

participants decided to access these resources was dependent on their *effort* to 'find' expert providers and their willingness to invest time and money to progress.

6.2.2.3 *Survival*

The cost of complying with employment-related legislative obligations was perceived to be a contributor to SME *survival*. Expert resources cost money and this cost was considered in two ways:

1. Firstly, the impact of cost expenditure on business profitability; and,
2. Secondly, opportunity cost of monies that could have been expended on business growth.

The cost of compliance was also found to be time-based, and owner/managers who attempted to be self-sufficient experienced long working weeks. For the most part, those participants acknowledged that it was their responsibility to manage employment-related obligations and accepted that this was an unpaid part of the role of owner/manager. Nonetheless, there was an impact to health and family life.

Most Stakeholders stated that SMEs do not have the economies of scale to engage in-house experts. Employer association participants also reported that time spent on employment-related legislative compliance impacted on owner/managers' health and family life. Husbands, wives, partners and other family members contributed to assisting with compliance activities and often this was unpaid work. While the benefit was a 'free' resource, the downside was again the impact on family time. In some cases, the 'free' resource could have been engaged in alternative paid employment, therefore, there was an opportunity cost incurred.

Quantifying the perceived cost to comply with employment-related legislative obligations, participants ranged from a "*few hundred dollars*", to "*over \$100,000 a year*". Time to comply spanned "*a few hours*" to "*all of my time*". Findings reveal that owner/managers do not always delineate their Government compliance obligations and often think of regulations as a general overhead. However, one participant described selling an 'employing' business and buying one without employees as a means of releasing herself from employment-related obligations.

Changes or additions to legislative compliance were a particular burden for owner/managers. Each time something changed there was a spike in the *effort* required and this was generally unplanned activity. In making a decision to expend money or time to implement changes required by legislation, business continuity and *survival* was the primary consideration.

Australian researchers (Lewis et al. 2015) surveyed 391 small business owners in New South Wales and Victoria to inquire into their experiences with regulatory compliance. The researchers also sought commentary on the perceived costs to comply and inhibitors to business performance. Survey participants reported the following with regard to employment-related regulatory compliance:

1. Of the 10 regulatory obligations included in the survey, the top four from a compliance difficulty perspective were:

- i. Taxation: 42 per cent of participants
 - ii. Occupational health and safety: 39 per cent of participants
 - iii. Superannuation: 29 per cent of participants, and
 - iv. Workplace relations: 28 per cent of participants
2. The cost of occupational health and safety compliance was identified as having a significant impact on business operations and also had the highest frequency of commentary on complexity and effort to comply.
 3. Large and medium firms had the greatest difficulty with workplace relations and occupational health and safety but small firms reported fewer compliance concerns. Nonetheless, taxation, occupational health and safety, and workplace relations compliance were the top three concerns for small business owners.

Owner/managers' frustration with employment-related legislative compliance is reflected in verbatim comments in this research and was consistent with the findings of Lewis at colleagues (2015). Owner/manager participants talked about balancing regulatory compliance with "*keeping the wolves from the door*", and participants to Lewis and colleagues research made comments such as "workplace relations is out of control" (Lewis et al. 2015, 17).

Time to comply and *cost to comply*, are subordinate themes to *survival*. When considering the steps taken by owner/managers to comply with employment-related legislative obligations, this research has found that participants did nothing or 'gave up', invested more time to research and find answers, accessed *trusted advisors*, or engaged internal or external expertise. There seems to be little question that regulatory compliance is difficult for SMEs and that there is a cost to achieving compliance. SMEs do not have the economies of scale achieved by larger employers; therefore, cost and time implications do contribute to business *survival*. Time away from the business is an opportunity cost and can impact on owner/managers' health and family life. Expenditure on expert assistance may avoid time investment; however, has the ability to risk profitability and investment in the business.

The common theme in all regulatory compliance-related literature is one of distancing compliance from the role of running an SME. That is, compliance in general is not considered 'core' business and is talked about in terms of something that was not contemplated or costed as part of running a business. Regulatory compliance is talked about in terms of being an afterthought and not something that could be reasonably contemplated or considered prior to starting a small or medium business.

6.2.2.4 *Trust*

Owner/managers access informal sources of support such as family members, friends, accountants, and their business network to assist their compliance with employment-related obligations. Participant owner/managers' motivation to achieve compliance in this informal manner was found to be influenced by two factors. Firstly, owner/managers trust these informal advisors and distrust Government agencies. Secondly, informal resources are a 'cheap' alternative to fee-for-service providers.

In navigating employment-related legislative compliance, owner/managers reported experiencing anxiety when interacting with Government agencies. Participants feared that asking a question or seeking advice would signal their lack of employment-related knowledge. They reported that this lack of knowledge could then make them a target for further Government scrutiny and this was something they sought to avoid.

Fear and distrust of the FWO was consistent across half the owner/manager participants. These participants shared a desire to have access to Government resources where they could feel safe and “*without fear of being prosecuted*”. Owner/managers referred to WorkSafe WA as a “*bully*” and most reported that they would avoid a ‘free’ safety health check from this agency for fear of future ramifications through making themselves known to Government inspectors.

The findings of this research support a submission by the Office of the Small Business Commissioner to the House of Representatives Standing Committee on Education and Employment’s inquiry (Australian Small Business Commissioner 2015). In referring to factors inhibiting SMEs from employing staff, the 2015 report by the Australian Small Business Commissioner found that SMEs are reluctant to access Government support resources. This reluctance was said to stem from a fear of engaging with ‘regulators’ and being penalised for inadvertent non-compliance with employment-related obligations.

Research participants referred to the poor quality of employment-related advice provided by Government agencies and this view was consistent amongst owner/managers, Union and Employer Association participants. As discussed earlier, *complexity* of employment legislation makes it problematic for Government agencies to easily dispense advice and support. Nonetheless, owner/managers reported experiencing less than optimal service and this reinforces any underlying distrust of agencies. While callers to Government hotlines expressed frustration if they received two different answers to a single question, it is conceivable that two different answers may apply if the question was phrased slightly differently on each occasion. Regardless, if owner/managers perceive Government agencies to be ineffectual and obstructive, this has the result of further impeding *trust*.

Just as distrust in Government agencies discouraged owner/managers from accessing Government support and resources, *trust* in an informal network motivated owner/managers to seek advice and support from ‘non-experts’. Family and friends were accessed for a number of reasons and these included: because they worked in a large business, they worked in Government, they had “*been around HR*”, had studied HR, or had some level of human resource understanding. Accountants and bookkeepers were considered ‘expert’ support resources because they had built trust over time and also because owner/managers sometimes limited their employment-related obligations to pay, tax and superannuation. Business networks were *trusted advisors* because they were empathetic and shared common experiences. Owner/managers were comfortable seeking advice from those who had been in similar situations and whom they trusted and admired. Years in business was reported as a measure of knowledge and credibility across business network *trusted advisors*. *Trust* underpinned informal relationships and the accuracy of the advice was a secondary consideration.

There is limited research into why SMEs seek advice from friends, family and local business networks on matters that should arguably be referred to expert advisors (Lewis and colleagues 2007; Coetzer and colleagues 2011). However, there is an emergence of research into the role of accountants in employment matters. Trust in accountants, and a trend toward extending their advice to employment-related matters, is supported by United Kingdom research by Jarvis and Rigby (2012). Jarvis and Rigby interviewed 19 accounting practices to understand why SME owner/managers came to them for employment-related legislative advice. The accountants considered they had built *trust* over the term of their relationship and owner/managers wanted advice from someone they could rely on. Accountant interviewees reported being asked for advice on hiring, firing and dealing with difficult employees and reported that the advice they provided was “common sense” (Jarvis and Rigby, 2012; 948). Jarvis and Rigby found a gap between employment-related skills and accounting skills and reflected on liability implications for accountants who provide employment-related legislative advice. Recently, the FWO took legal action against an outsourced payroll provider (an accounting firm) for their involvement in the underpayment of employees from a Melbourne fast food outlet (Fair Work Ombudsman 2016b). This is the first legal action of this kind against an accountant for their part in non-compliance with the FWA, and is an important precedent for organisations who provide employment-related services to SMEs.

Earlier research by Schizas and Jarvis (2011) explored the role of accountants in 1,777 SMEs in six countries. The researchers found that *trust* and confidence, coupled with recognition of technical expertise, led SMEs to seek regulatory advice from accountants. This degree of trust motivated SMEs to pursue a more diverse range of services from accountants. An Australian study of 485 SMEs found that tenure of the relationship will motivate SMEs to seek broader business advice from accountants but only if they have sufficient confidence in their ability (Carey & Tanewski 2016). Owner/manager participants in this current research also identified greater reliance on accountants for employment-related support and this was most evident when a long term relationship existed. This was reflected in their reference to the number of years they had known their accountant or the relationship the accountant had with their family.

Owner/managers reported the value of having access to *trusted advisors* and never questioned the ability of these ‘non-experts’ to provide advice in the specialist area of employment-related legislative compliance. At the same time, Government support providers such as the WA Department of Commerce, the FWO and WorkSafe WA were referred to as having a dual role of regulator and support provider. Owner/managers contended that they were required to seek advice from the same Government agency that was charged with pursuing actions for non-compliance. In raising awareness of their lack of knowledge by virtue of asking a question, owner/managers described themselves as “*sitting ducks*” for greater Government scrutiny.

Government Stakeholder participants talked about using inflammatory media releases as a means of motivating SMEs to comply with employment-related legislation but owner/manager participants reported that these publications make them less likely to access Government resources. Referring to the literature, FWO media releases such as

“Perth cleaning contractor faces Court over alleged overseas worker underpayments”, “co-operation at the “door of the Court” too late to avoid penalty”, “Judge tells businesswoman and Melbourne retailer faces court for allegedly underpaying workers more than \$90,000”, are doubtless confronting for SMEs (Fair Work Ombudsman 2015b). While Stakeholder and owner/manager participants recognised that an audit (or the perceived proximity of an audit) by a Government regulator, will increase the priority of employment-related legislative compliance, media releases were found to discourage owner/managers from accessing the support resources they require to comply.

The FWO has invested effort to promote their support services to SMEs. In one such article, the Fair Work Ombudsman (Natalie James) said the FWO wanted to educate rather than prosecute SMEs who were found to have done the ‘wrong thing’ (Inside Small Business 2016). However, the same article referenced a security company that had underpaid employees and was required to back-pay \$30,000. In a speech to the 2014 National Small Business Summit, Ms James recognised that most businesses want to do the right thing from a compliance perspective (Fair Work Ombudsman 2014b). She also told the audience, “It’s true that we take some people to court. That’s what grabs headlines”. Ms James recognised SMEs do not typically have access to HR professionals and for this reason they should co-operate with the Office of the FWO (Taranto 2015). Nonetheless, there is still much work to do in order to moderate the perception of the FWO and this is evidenced in a 2015 joint submission by the Australian Hotels Association and the Accommodation Association of Australia. This contribution to a workplace relations productivity inquiry stated, “...the Fair Work Ombudsman’s approach can also appear to the participant to be heavy-handed and prejudicial” against the employer (Australian Hotels Association and Accommodation Association of Australia 2015, 22).

Stakeholder participants acknowledged that owner/managers access informal networks for employment-related legislative advice and primarily attribute this approach to cost avoidance. Nonetheless, Stakeholders recognised that owner/managers are distrustful of Government agencies and this can result in a reluctance to utilise a Government service. Stakeholder participants were concerned with the use of ‘non-experts’ to meet compliance obligations and were also critical of the “*overuse*” of accountants in the area of employment-related legislative advice. At the same time, Stakeholders reported that employment-related compliance is a priority and pecuniary penalties and audits are necessary. As a result, the dilemma of support versus pecuniary action will doubtless remain if Government agencies such as the FWO, WorkSafe WA and the WA Department of Commerce continue to retain this dual role.

When describing an ideal service to assist with employment-related legislative compliance, owner/managers described a desire for someone to talk to. In doing so, they reported the need for an ‘independent’ service because they wanted to feel safe and secure when discussing their compliance questions or dilemmas. In this regard, a Government provider was not considered to be either ‘independent’ or trusted.

The subordinate themes to *trust* were: *deterrents to optimising Government resources* and *trusted advisors*. There was limited research that considered an owner/manager’s

reluctance to access services provided by Government agencies. Access to *trusted advisors* also identified a paucity of prior examination. The exception was the 'extended' role of accountants, where prior research found that *trust*, confidence, and tenure could induce SMEs to broaden the scope of these services.

6.2.3 Research Question 3

What additional support services do SMEs want in order to support their compliance with employment-related legislative obligations?

This research question sought to explore the features of employment-related compliance resources that were preferred by owner/managers. The findings are briefly summarised as follows:

1. Owner/managers stated a preference for a single point of contact to obviate the need to know which agency to go to.
2. Simplicity was requested in the form of checklists and flow charts tailored to SMEs.
3. Government agencies were asked to provide a 'push' service and initiate communication about employment-related compliance requirements with owner/managers (instead of the other way around).
4. Owner/managers wanted an expert resource that they could talk to without incurring cost; however, requested that this service be provided independent of Government.

A response to this research question is now presented in further detail, and in the context of the emergent superordinate themes of *complexity* and *trust*.

6.2.3.1 *Complexity and Trust*

Owner/manager participants were somewhat aware of 'no cost' Government resources to assist with employment-related legislative compliance. Participants who were unaware of Government resources wondered how they could know. These participants also asked why Government agencies did not initiate contact with them since Government agencies were able to 'find them' to complete "*meaningless surveys*".

Of the owner/manager participants who reported being proactive in accessing Government services, few found the resources easy to use. Most were critical of the support and resources for two primary reasons. Firstly, participants found the information difficult to access and understand, and were often unable to answer the 'technical' pre-requisite questions asked on the website or via hotline personnel. Secondly, owner/managers reported that they were distrustful of Government agencies and were reluctant to fully engage with support providers that held a dual role of service provider and regulator.

Stakeholder and owner/manager participants consistently referred to the *complexity* of employment-related legislation. Both groups reported *complexity* as a primary factor influencing owner/managers' inclination to comply. Furthermore, Stakeholders acknowledged that the intricacies of the legislation would negatively impact on an owner/manager's experience when navigating resources to support compliance with employment-related legislative obligations.

Complexity of employment-related legislation is supported by academic and professional literature. In a submission to a Federal Standing Committee Inquiry into inhibitors to employment growth in small businesses, Restaurant and Catering Australia noted *complexity* of employment legislation as a primary contributor to hindering growth (Restaurant and Catering Australia 2015). The submission by Restaurant and Catering Australia referred to the difficulties created by the Australian workplace relations system and resultant regulatory burden borne by SMEs. Specifically, the 2015 submission referred to 15,800 pages of documentation relevant to workplace relations compliance. In the same year, the Chief Executive Officer of global recruitment firm Hays referred to the Australian employment legislative environment as, “the most complex, arcane set of labour laws and payment schemes in the world” (Hannan 2015b). The FWO also contributed to commentary about *complexity*, particularly in relation to modern awards (Keating 2014). Finally, contributors to the Australian Master Fair Work Guide discuss the *complexity* of current legislation and also refer to the increased volume of regulations (CCH Australia Limited 2010).

Perceptions of the overly legalistic nature of employment-related legislation in Australia were evident in a report into the Workplace Relations Framework (Australian Government Productivity Commission 2015). The Report described the legislation and processes to be overly legalistic and discussed the complexities underpinning requirements such as procedural fairness. Owner/manager participants in this current study consistently talked about legislation that was developed by bureaucrats with large businesses in mind. Those participants reported that large businesses have access to the expert resources required to navigate employment-related legislative obligations. Some participants questioned why legislation is developed and implemented in such a way that only “lawyers” can understand. Others stated that employment-related obligations are unnecessarily obstructive. New legislation such as that proposed by the Work Health and Safety Bill 2014 (WA) was referenced as another example of new legislation that will increase SME compliance obligations.

When asked to describe their ideal employment-related legislative support service, owner/manager participants in the current study talked about wanting “simplicity” and resources tailored specifically toward SMEs. Participants referred to a “one stop shop”, checklists, flow charts and a service where the Government came to them instead of the other way around. Owner/managers commented that Government agencies have their contact details and should be able to ‘push’ information to them.

Owner/managers referred to the benefit of having someone to talk to but said that this would need to be someone independent of Government because they did not want to be “judged”. Again these findings support a 2015 study by Australian researchers Lewis and colleagues where small business owners described their preferred solutions to minimising the burden of regulatory compliance (Lewis et al. 2015). Lewis and colleagues reported that research participants used words and phrases such as, “simplify”, “broadcasting in plain English” and “simple consistent Federal rules to replace the eight State systems” to describe changes they desired. They also asked for a “Fair Work Australia for employers” and “more assistance and less willingness to fine and punish” (Lewis et al. 2015, 20).

Research undertaken by Schmidt and colleagues (2007) examined SME retailers in rural towns in the United Kingdom and sought to understand the impact of regulation on business outcomes. The researchers found that lack of access to information contributed to owner/manager non-compliance with regulatory obligations, and this outcome was discussed in the context of quality and usability of Government support and resources. Specifically, the following findings from Schmidt and colleagues support those from this current study:

1. Of the 16 areas of regulatory compliance surveyed, employment-related obligations accounted for 44 per cent of regulatory concerns.
2. SMEs were under resourced to manage regulatory compliance and were generally anxious about their capability to comply.
3. The mechanisms used to disseminate Government support and resources did not correlate with how SMEs wanted to access information.
4. Government agencies were not proactive in offering support services and were generally reactive in their approach to providing resources to employers.
5. Owner/managers wanted Government agencies to give them the information they needed via mail and not online.
6. Most participants reported finding out about their obligations from national and local press.
7. Only a quarter of participants were aware of local or national Government agencies relevant to providing regulatory support and resources.

(Schmidt et al. 2007)

A United States joint study by Washington State Government agencies also sought to understand how Government could contribute to small business survival (Departments of Community, Trade and Economic Development; Employment Security; Labor and Industries, and Revenue 2007). The report found that small business incurs a greater compliance investment, and regulatory time and cost investment are contributors to business failure. Some of the recommendations from this joint agency report included (a) business planning, training and education for small business owners comprising plain language wording, an explanation of legislative terms and the creation of common terms and definitions across agencies; and (b) increased communication and outreach to small businesses involving Government 'push' initiatives to small businesses from an information and communication perspective.

The Australian Government is cognisant of SMEs' challenges in achieving compliance with the FWA, and some of these initiatives are now discussed. Firstly, the Office of the Australian Small Business Commissioner provided a submission to the House of Representatives Standing Committee on Education and Employment's inquiry into the inhibitors to employment in small businesses (Australian Small Business Commissioner 2015). This Report described the following as potential inhibitors to small business hiring employees:

1. The complexity of the modern awards.
2. Fear of non-compliance with the FWA.

3. The cost of penalty rates.

The Report also provided eight recommendations to promote employment in small business and these are summarised as follows:

1. Streamlining of Government definitions and the development of a summary sheet for small business.
2. Clarity about employee or contractor status to help mitigate against unintentional sham contracting.
3. Consistent WorkCover provisions across States.
4. Undertake further research to model compliance cost with the size of business in order to develop a cheaper and easier solution for small business.
5. Examination of the Productivity Commission's report on penalty rates.
6. Review the provisions around hiring an employee and remove any steps that are legislatively unnecessary.
7. Access the knowledge and experience of the FWO small business team.
8. Consider consolidation of the Federal, State and Territory workplace relations systems.

(Australian Small Business Commissioner 2015)

In seeking simplicity, there was an assumption amongst owner/manager participants that they were being exposed to more information than they needed. Participants had a desire for a service that told them what they needed to know as an SME and nothing else. Unfortunately, the nature and *complexity* of employment-related legislation is such that the vast majority of the obligations are relevant to all businesses regardless of size or number of employees.

The dilemma for Government agencies seeking to provide comprehensive support for Australian employers and employees is understood. From the literature and as reported by all Stakeholder participants, a significant investment has gone into endeavouring to provide high quality and comprehensive support resources. However, if online resources are to be all things to all people, it is logical that information will be voluminous and will need to be delivered at a price point. For this reason, it is perhaps not reasonable to expect the Government to deliver a customised service whereby owner/managers receive the same level of in-depth advice they would receive from a fee-for-service provider.

6.3 Discussion Summary

The purpose of this research was to explore how SME owner/managers navigate employment-related legislative obligations, their perceived cost of compliance, and awareness and use of available support resources. Stakeholders (Government, Union and Employer Associations) were also engaged to uncover their perceptions of owner/managers' experience with employment-related legislative compliance.

As illustrated in Figure 6-2, five superordinate themes emerged from semi-structured interviews with 41 SME owner/managers and nine Stakeholders and these were: *effort*, *complexity*, *survival*, *trust* and *autonomy*. Potential causal relationships may exist between

the five superordinate themes with *effort* central to the behaviours and experiences of SME owner/managers' complying with employment-related legislative obligations.

An owner/manager's *effort* to comply with employment-related legislation is characterised by their assumptions of the obligations, the priority assigned to compliance, and the level of *effort* invested in accessing and *optimising* available support resources. *Complexity* impeded the success of 'no cost' Government resources available to support employment-related compliance and this sometimes necessitated owner/managers' engaging fee-for-service resources. Time and cost to comply were considered to impact business *survival* and this led owner/managers to balance their compliance *efforts* with the risk of being 'caught'. Distrust in Government agencies together with cost avoidance also led owner/managers to seek support from 'non- expert' *trusted advisors*. Owner/managers also relied on the interpersonal relationship between the employer and the employee and sought the *autonomy* to run their business without perceived over-regulation and outside interference.

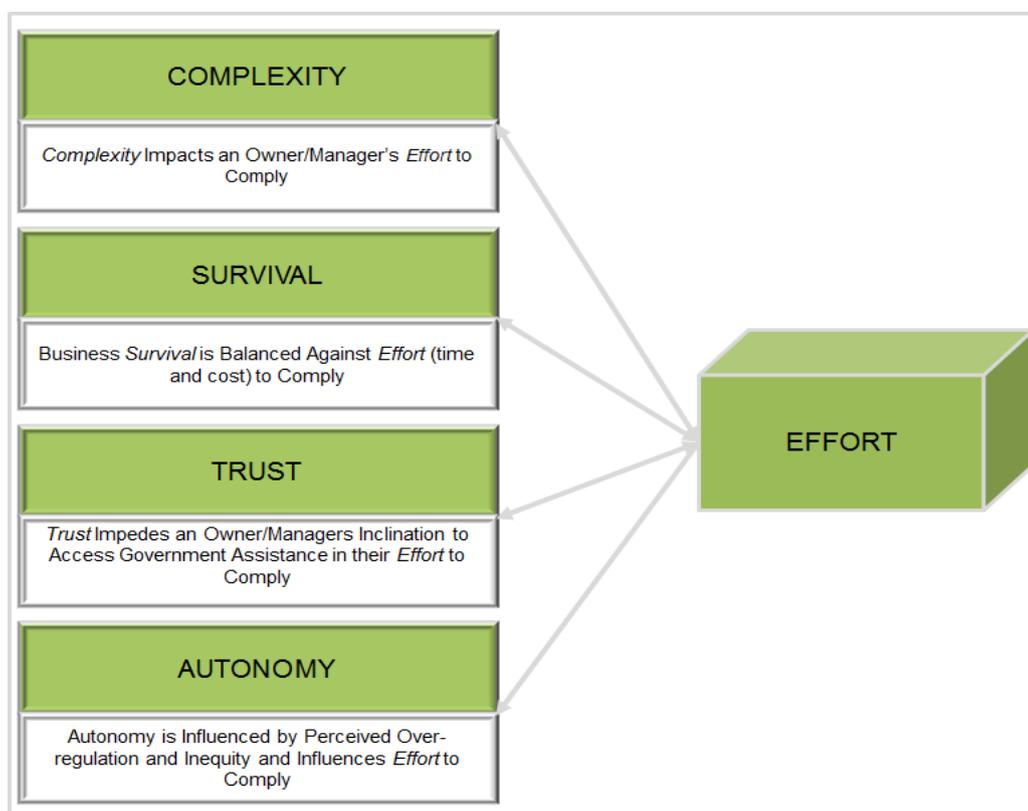


Figure 6-2: Potential Causal Relationships between Superordinate Themes

This research was framed by three research questions. The first research question sought to understand owner/managers' inclination to comply with employment-related legislation and also to explore their experiences meeting their obligations. The research found that owner/managers are inclined to comply but balance their compliance *efforts* with investment in 'core' business activities. Some owner/managers are more able than others to comply without external assistance or the investment of an immense amount of time to

achieve self-sufficiency. All owner/managers favoured an autonomous employer/employee relationship, and disliked perceived over-regulation and external interference.

The second research question examined the actions taken by owner/managers to meet their employment-related legislative obligations, the perceived costs associated with these actions and to understand awareness and use of support resources. The findings showed that owner/managers prioritise their *efforts* to comply and factors such as prior audits or the risk of personal liability increased the priority given to employment-related legislative compliance. The *complexity* of the legislation was found to impede the usefulness of 'no cost' Government support resources and this led owner/managers to 'give up', invest more time trying to become self-sufficient, pursue help from 'non-expert' *trusted advisors*, or engage internal or external fee-for-service expertise. The actions owner/managers took to meet employment-related legislative obligations had *survival* implications from a time, cost or risk perspective. Those who invested time incurred a business, family or health opportunity cost. Those who engaged fee-for-service providers incurred expenditure that had a bearing on profitability, while those who did nothing carried the risk of potential back payments and/or pecuniary penalties. Owner/managers were distrustful of Government agencies and the dual role of regulator and support provider given to the FWO, the WA Department of Commerce and WorkSafe WA contributed to that distrust. Owner/managers displayed a preference to seek support and advice from people they trusted and this was done without consideration of the relative expertise of these *trusted advisors*.

Finally, the third research question examined what additional resources SMEs want to support their *efforts* to comply with employment-related legislation. Owner/managers were frustrated with the lack of certainty provided by Government agencies and looked for simplicity. The research found that owner/managers want a single point of contact across employment-related legislative compliance as this would avoid multiple points of contact and wasted time. There was also a desire for simple checklists and flow charts that were devoid of jargon and provided information tailored toward SMEs. Owner/managers were critical of Government agencies whom they perceived lacked proactivity in 'pushing out' information relating to employment-related legislative obligations.

Participants referred to the ease with which Government agencies can 'find' them for a myriad of reasons and wondered why information they needed to know could not be 'pushed' directly to them. Nonetheless, owner/managers still wanted someone they could talk to in order to ask a question or to verify their own interpretation of the legislation. In describing this service, owner/managers sought somewhere they could feel safe, not be judged and or be open to potential penalties.

6.4 Research Significance

There are limited qualitative studies focused on understanding SME owner/manager experiences when navigating employment-related legislative obligations in Australia. This current study contributes to the existing research by identifying opportunities for Stakeholders (Government, Unions and Employer Associations) to expand support for SMEs

in order to promote SME owner/managers' success in their understanding and compliance with employment-related legislation.

Five superordinate themes emerged from this inductive exploratory research, and these findings have implications for Stakeholders in their interactions with SMEs. The superordinate theme of *effort* extends existing research which identified that SMEs prioritise how they expend their time and resources. This current research found that SMEs balance time to comply with other priorities and consider finding Government websites and hotlines inefficient and onerous. If the information is not easily available, SME owner/managers will often give up and 'assume' their obligations based on what they might have heard from within their business network.

Consistent with prior findings into SME compliance with Government regulations more generally, the superordinate theme of *complexity* was again reinforced in this research. The research establishes a link between prior findings of perceived complexity and how this translates to the usability of Government support services. This finding has implications for providers such as the FWO, the members of which invest heavily in developing support services for SMEs; however, the SME owner/managers they seek to assist report a reluctance to use these services.

SME '*trust*' in Government agencies has been reported in prior studies, including the inclination for SME owner/managers to turn to 'trusted advisors' for support. The current research extends studies into SME distrust of Government agencies, identifying a potential conflict between an agency's dual role as support provider and regulator. SMEs were found to be reluctant to seek advice from agencies such as the FWO for fear of being 'targeted' for an audit or further examination. This finding has implications for all Government agencies that are tasked with this dual role.

The emergent themes identified in this research provide guidance to Stakeholders on the resources that SME owner/managers desire to support their employment-related legislative compliance; this guidance is grounded in safety, simplicity and independence. There are opportunities for Employer Associations to contribute further to the role they play in supporting SMEs, but this will require a more structured industry association delivery model.

Chapter Seven presents a summary of the research findings and resultant conclusions to the research questions. Recommendations, research limitations and opportunities for future research are also discussed in the context of employment-related legislative compliance in the SME context.

7 CONCLUSION

7.1 Introduction

This Chapter provides a summary of the research findings and the implications they have for each of the research questions. Recommendations, research limitations and opportunities for future research are also discussed with reference to employment-related legislative compliance by SMEs (small and medium enterprises). Finally, the implications of the findings are discussed in the context of opportunities for Stakeholders (Government, Union and Employer Associations) when contemplating future strategies to achieve employment-related legislative compliance.

7.2 Summary of Findings

The findings represent SME owner/managers' knowledge and awareness of employment-related legislative obligations and their willingness to comply. The findings also identify SME owner/managers' compliance strategies and their perceived cost of compliance. Finally, the findings reflect SME owner/managers' awareness of supporting resources and the extent to which these resources are used. Stakeholders' perceptions of owner/manager compliance behaviours, knowledge, experience and use of available resources also contributed to the findings.

This exploratory research found that owner/managers' experience with employment-related legislative compliance is defined by five superordinate themes: *effort*, *complexity*, *survival*, *trust* and *autonomy*. Relationships were identified between the five superordinate themes with *effort* presenting as the central theme. *Effort* to comply with employment-related legislation was found to be grounded in: the extent to which owner/managers 'assume' the requirements of these obligations, the priority assigned to employment-related legislative obligations, and the level of *effort* invested in accessing and use of available support resources. Owner/managers considered that paying over the award rate of pay provided them with workplace flexibility in areas related to payment entitlements and employer responsibilities. Furthermore, word of mouth between owner/managers and 'non-expert' *trusted advisors* created compliance assumptions that were generally inaccurate. Prior experience with regulators such as the Fair Work Ombudsman (FWO), WorkSafe WA or the WA Department of Commerce were found to influence the priority owner/managers assign to employment-related legislative compliance, and participants generally reported becoming more proactive in their compliance behaviours as a result of their involvement with a regulator. Personal liability for the payment of pecuniary penalties was also found to influence the priority owner/managers assigned to employment-related legislative compliance because they were concerned about how financial penalties would impact on their family lives.

The level of *effort* that owner/managers were inclined to invest in employment-related legislative compliance was found to influence their behaviours when they encountered *complexity* in interpreting and applying the legislation. Some owner/managers gave up and returned to a position of 'assuming' that they understood their obligations. Others

persevered and continued to search support websites or call hotlines, and a few made the decision to engage fee-for-service expertise. The *complexity* of employment-related legislation was found to create difficulties for owner/managers when they engaged with 'no cost' Government support services. Hindrances to the effective and efficient use of these support resources were found to include (a) difficulty in knowing how to correctly frame a question; and (b) being able to provide answers to 'filtering' questions posed by a website or a hotline. Other difficulties that resulted from the *complexity* of the legislation extended to: owner/managers' frustration at being unable to source a definitive answer from a Government agency, receiving inconsistent answers from Government personnel, and the use of overly legalistic wording or jargon in relevant communication. Fundamentally, owner/managers sought a level of simplicity that could not necessarily be provided by Government support services, possibly due to the *complexity* of employment legislation.

Regardless of the course of action taken by owner/managers when encountering *complexity* in navigating employment-related legislation, *effort* to comply was found to be balanced with business *survival*. Owner/managers were found to be inherently focused on achieving revenue and maintaining profitability and considered employment-related legislative compliance as an overhead rather than a mechanism for improving productivity or minimising potential health and/or safety costs. For this reason, any time or cost invested in achieving compliance was balanced against the risk of being 'caught' and found to be non-compliant. The cost and time invested in employment-related legislative compliance was described as having a negative impact on owner/managers' work and family life, and this extended to health problems, relationship breakdowns and business opportunity cost. Those who elected to engage fee-for-service providers incurred expenditure that was found to have an adverse bearing on profitability, while those who did nothing carried the risk of potential back payments and/or future pecuniary penalties.

Owner/managers were found to use 'workarounds' to minimise their compliance exposure and these workarounds included practices such as employing casual workers to avoid unfair dismissal claims. Other risk minimisation strategies included terminating employees in their probation period (again to avoid unfair dismissal claims), and applying covert discrimination practices during recruitment. These covert discrimination practices extended to making employment decisions based on physical attributes, age and gender as part of the 'unwritten' selection criteria. Covert discrimination within recruitment was also found to extend to rejection of applicants on the basis of family responsibilities, or the potential to seek parental leave at a future date. Paying 'go away money' to avoid prolonged and costly unfair dismissal litigation was also found to be a standard practice across owner/managers.

A lack of *Trust* in Government resources was found to influence owner/managers' inclination to invest *effort* in accessing support websites and hotlines. Fear of regulators such as the FWO, Worksafe WA or the WA Department of Commerce was found to inhibit owner/managers from accessing these Government agencies as providers of support resources. Fundamentally, owner/managers were distrustful of Government agencies that provided a dual role of support provider and regulator. Owner/managers were found to be more confident and comfortable accessing *trusted advisors* such as friends, family, accountants and business networks, irrespective of their level of expertise in employment-

related legislative compliance. These *trusted advisors* were reported to be empathetic sources of support and provided assistance that was seen to be devoid of risk or judgement. In addition to accessing *trusted advisors*, some owner/managers were found to engage fee-for-service expertise. Paying for expertise was generally more prevalent in the Resource Sector or in medium-sized businesses. Nonetheless, other motivated owner/managers without the economies of scale to 'afford' expert resources were found to use collaborative strategies which involved combining with other small businesses to engage employment lawyers or consultants.

A perception of over-regulation and desire for self-governance was found to detract from an owner/manager's inclination and *effort* to comply. Owner/managers relied on the interpersonal relationship between the employer and the employee to come to mutual agreement on the terms and conditions of employment. In doing so they sought the *autonomy* to run their business without perceived over-regulation and interference from external Stakeholders. In relying on the uniqueness and close proximity of interpersonal relationships in an SME, owner/managers failed to recognise the inherent power inequality between an employer and their employees. Owner/managers displayed degrees of paternalism when describing their relationship with employees and this was underpinned by an attitude of employer control and 'my business/my way'. Furthermore, owner/managers perceived employment-related legislation to be employee biased and not fit for purpose in an SME environment. There was limited recognition that statutory legislation sought to provide employee protections and balance the natural 'master/servant' relationship in an employment environment.

Although *effort* was found to be pivotal in employment-related legislative compliance, the *complexity* of the legislation means that there is a fundamental requirement for owner/managers to have the capability to research, comprehend and meet their obligations. Irrespective of the *effort* to comply, some owner/managers will be more able than others to achieve an adequate level of comprehension and competence. If owner/managers are unable to be self-sufficient through the use of 'no cost' Government resources, their options extend to either 'giving up', committing more time to further research and understanding, accessing 'non-expert' *trusted advisors*, or paying for expert advice. It is these decisions that influence *survival* because time away from, or cost to, the business can impact on revenue and ultimately profitability.

When asked to describe an ideal service that could provide support for employment-related legislative compliance, owner/managers reported a desire for simplicity. The research found that owner/managers want a single point of contact across all employment-related legislative obligations. There was also a desire for simple checklists and flow charts that were devoid of jargon and provided information tailored toward SMEs. Owner/managers were critical of Government agencies that provided extensive and voluminous written resources but relied on SMEs' inherently knowing that these resources existed. Participants sought proactivity from Government agencies and questioned why information they needed to know could not be 'pushed' directly to them. Owner/managers still wanted someone they could talk to in order to ask a question, or verify their own interpretation of the legislation. In describing this resource, owner/managers sought a

service they could freely access, where they could feel safe, and not risk potential pecuniary action.

7.3 Contribution to Literature

This study contributes to existing literature in two ways. Firstly, the research provides insights for Stakeholders when considering their investment in support strategies for SME owner/managers seeking to meet their employment-related legislative obligations. Secondly, the study contributes to a more significant body of work on the characteristics of SME owner/managers when navigating their legislative and regulatory obligations more broadly.

By undertaking in-depth interviews with Stakeholder and SME owner/manager participants, this study further examines SME behaviours when navigating their employment-related legislative obligations. This exploratory research addresses gaps in existing literature by extending predominantly quantitative research in the field of SME employment-related legislative compliance. With the exception of an early study by Todd and Hutchinson (2011), Australian studies into employment-related legislative compliance pre-date the FWA. This current study was able to establish findings that reflect SME owner/manager experiences with the FWA, and also their understanding and use of support services provided by the FWO. The FWO is also examined in the context of the dual role they provide, and how this translates to SME distrust. This study is the first qualitative research to focus solely on Australian SME owner/managers and their compliance with employment-related legislative compliance, and enabled in-depth examination in this area.

The research also contributes to our understanding of the complexity of employment-related legislation and how that complexity interacts with effort to comply. Complexity is also examined from Stakeholders' perspectives, particularly those experienced by the FWO and other 'no cost' Government support providers when designing resources for SMEs, either online or via a hotline. Confusion over Federal and State jurisdiction is also identified as a contributory factor to complexity, recognising that this dilemma is peculiar to WA.

Literature on SME owner/managers' use of "support infrastructure" and "trusted advisors" (Lewis and colleagues 2007; Coetzer and colleagues 2011) is extended in this current study. The sensitivities underpinning employment-related legislative compliance, coupled with pecuniary penalties for non-compliance, was found to lead SME owner/managers to access "trusted advisors" in preference to utilising expert 'no cost' resources provided by Government agencies. This finding may be of concern to the FWO, with the agency reporting an investment in excess of \$650 million on support resources over a five year period to 30 June 2016 (Fair Work Ombudsman 2012; Fair Work Ombudsman 2013; Fair Work Ombudsman 2014a; Fair Work Ombudsman 2015c; Fair Work Ombudsman 2016a).

7.4 Research Strengths

There is a paucity of research into employment-related legislative compliance in SMEs. For this reason, a constructivist paradigm was employed to deliver this exploratory research and this enabled meaning to be constructed from lived experiences at a point in time

(Stewart 2010). Myers (2013) contends that it is talking with a person that allows the researcher to understand both their thoughts and their actions in a way that the written word cannot achieve. In seeking to explore and source understanding from SME participants on the subject of employment-related compliance, knowledge building was achieved through interaction between the researcher and the participants (Hesse-Biber & Leavy 2011).

Qualitative research enables the collection of thick descriptions to identify the experiences of the participants being studied (Holloway 1997). Semi-structured interviews with 41 owner/managers and nine (9) Stakeholders provided in-depth collaborative dialogue with individuals who had the knowledge and experience to provide answers to the research questions. In total, 46 hours of interviews resulted in just under 1,000 pages of transcript.

This depth of research contributes to existing literature by providing insight into owner/managers' experience in dealing with employment-related legislative compliance. Strengthening the contribution of the research is the Stakeholders' perceived views of owner/managers' experiences navigating their employment-related legislative obligations. This dimension is particularly important when considering that this research puts forward recommendations that identify opportunities for Stakeholders to expand support for SMEs in order to promote success in their understanding of and compliance with employment-related legislation.

7.5 Research Limitations

As with any research project, there are limitations that exist within this research endeavour. While it is considered that none of the limitations impacts the credibility of the research findings, they do require discussion and are summarised as follows:

7.5.1 Qualitative Research

Just as a qualitative research methodology draws strength from active and in-depth interaction with research participants, these and other strengths can also be weaknesses. Sogunro (2002, 5) provided a high level comparative analysis between qualitative and quantitative research and the limitations of this current research are now discussed with reference to pertinent aspects of Sogunro's findings.

Active interaction with research participants through the use of semi-structured interviews achieved thick descriptions and facilitated agile two-way communication. This data collection method also provided the ability to probe and clarify understanding throughout the interview between researcher and participant. However, this close interaction with interviewees could have caused some participants to potentially overstate their commitment to compliance with employment-related legislation.

There are pecuniary penalties for non-compliance with employment-related legislation and owner/manager participants reported concerns about interacting with Government agencies for fear of making themselves noticed and attracting a regulatory audit. In responding to the interview questions, some owner/managers displayed discomfort when answering questions that related to modern award compliance, record keeping,

discrimination, and employee termination. It must be considered that participant bias and reticence to be fully truthful may have eventuated because of the compliance based nature of the research. Although strategies were implemented to mitigate participants' providing 'favourable' responses to the researcher (informed consent declaration, anonymity provisions, ethics conditions etc.), these strategies may not have fully prevented owner/managers from potentially overstating their compliance *efforts*.

Finally, qualitative research requires the researcher to interpret the data and this presents a subjective rather than objective analysis. While the expertise of the researcher is important in qualitative research and semi-structured interviews require the researcher to have sufficient knowledge of the research subject (Richards & Morse 2007), this also requires bracketing of any potential personal bias in the data analysis stage of the research (Minichiello & Kottler 2010). While the potential for researcher bias exists in all qualitative research, exposure was limited in this research by the implementation, recording and filing of an audit trail throughout the data collection and analysis stages of the research. Specifically, each phase of the six phase data analysis was documented to provide a detailed audit trail across all transitional phases of the data analysis (Braun & Clarke 2006, 35).

7.5.2 Research Location

Although it was reasonable to contain this research to participants in Western Australia, it is acknowledged that Western Australia is the only State that declined to refer industrial powers to the Commonwealth. For this reason, some of the *complexity* that owner/managers associated with determining jurisdictional coverage would not apply in other States. Regardless, the findings are relevant and particularly pertinent to the State Government of Western Australia.

7.5.3 Research Sectors

Initially three Sectors were selected for this research but difficulty in recruiting participants meant that the Retail Sector was extended to include SMEs that engaged in the sale of both 'goods' and 'services' to the general public. The other two Sectors were Hospitality and Resources. While it is considered that the extension of the Retail Sector to include service providers added breadth to the research findings by introducing businesses such as Hair and Beauty, and professions such as Physiotherapy and Counselling Practices, it is acknowledged that future research with participants from other industry sectors may produce different experiences and perspectives.

7.5.4 Research Sample

Just over 50 per cent of the owner/manager participants were recruited from the Curtin Growth Manager Program. This program is designed for SME owner/managers who are focused on the progress of their business and learning new initiatives to assist with the growth of their business. Although the program does not cover employment-related legislative compliance, it may be reasonable to consider that owner/managers who attend this program are inherently proactive. For this reason it could be contemplated that the

results of the research may have varied if participants had no prior exposure to such a program or to Curtin University.

7.6 Observations and Recommendations

The recommendations from this study are based on observations from the research findings. It is hoped that Stakeholders will embrace these recommendations as opportunities to explore potential avenues to expand support for SMEs in order to promote success in their understanding of and compliance with employment-related legislation.

7.6.1 Government Agencies' Role as Support Provider and Regulator

Observation

Government agencies that provide employment-related legislative support to employers are also regulators of legislative compliance. The research has found that owner/managers are hesitant to access Government 'no cost' resources for fear of making themselves a target. The result is that owner/managers do nothing, access 'non-expert' *trusted advisors* or incur additional time and cost achieving compliance.

Recommendation

Relevant Federal and Western Australian State Government agencies consider a deployment model whereby agencies that provide employer support are separated from those that regulate and penalise.

7.6.2 Dual State and Federal Jurisdictions

Observation

Western Australia is the only State or Territory where non-public sector businesses are covered by dual industrial legislation (constitutional corporations by the *Fair Work Act 2009* (Cth) (FWA) and sole traders, partnerships and trusts (sometimes) by the *Industrial Relations Act 1978* (WA)).

Recommendation

The Western Australian State Government established a working party to determine the merit, cost and implications of referring industrial powers to the Federal Government.

7.6.3 The Role of Industry Associations

Observation

Access to and knowledge of industry associations was mixed across owner/manager participants. Some reported that their industry association was the primary provider of employment-related legislative compliance support, while other owner/managers in the same industry were unaware that an industry association existed for their profession.

Recommendation

Owner/managers stated that an ideal support service would involve having someone to talk to whom they trusted. They also reported a desire for information to come to them (rather than searching through Government websites looking for information). Industry associations have the potential to provide a formalised support service to SMEs and this would address the economies of scale dilemma experienced by owner/managers. The proposed model would involve industry associations providing the role of conduit between Government agencies and owner/managers. Clearly this 'idea' requires further exploration and due diligence; however, a similar model has already been put forward in an Australian study by Kumudini and colleagues (2014). Their research recommended further investigation into the potential for a partnership model which would see owner/managers, regulators and industry/Employer Associations working together toward educating and achieving legislative compliance amongst SMEs.

7.6.4 Challenges of Transitional Legislation

Observation

The initial challenges encountered with the FWA were grounded in the *complexity* of the transitional arrangements provided by the Act. Stakeholders also referred to these complexities and were critical of the confusion caused by inherent difficulties in meeting the requirements of the FWA.

Recommendation

Federal and State Governments consider the need for transitional arrangements and avoid legislation that unnecessarily applies these administrative burdens to employers. At the very least, it is recommended that Employer Associations, industry associations and invited SMEs be engaged to provide comment on the practicality and workability of proposed transitional arrangements.

7.6.5 The Role of the Small Business Development Corporation

Observation

The research found that there was limited awareness and clarity on the role of the Small Business Development Corporation (SBDC). Nonetheless, when awareness did exist, owner/managers responded positively when recalling their experience with the SBDC. The SBDC does not provide education or other services related to employment-related legislative compliance, yet they are the primary small business body in Western Australia in the provision of such information.

Recommendation

All SMEs register with the SBDC. This would enable the SBDC to achieve a 'captive audience' for distribution of material relevant to SMEs. The SBDC could also develop a self-funding education model whereby employment-related legislative updates could be provided to owner/managers on an annual basis for a nominal fee

(WebEx, local course, health checks etc.). There are in the order of 84,000 'employing' SMEs in Western Australia (Small Business Development Corporation 2016b) and an annual nominal fee of \$50 per SME could achieve revenue of \$4.2 million per annum to fund this education model.

7.6.6 Further Observations

Other observations from the research are not linked to recommendations but do warrant some commentary and reflection. Firstly, owner/managers consistently considered employment-related legislative compliance as an afterthought and not 'part and parcel' of running a business. The research found that some owner/managers were more able than others to navigate their legislative obligations. In contrast, those without the skills did nothing, sought advice from *trusted advisors*, or engaged fee-for-service assistance. Owner/managers often embark on self-employment because they have the passion, skills and ability to achieve success. While there appears to be recognition that support is required for owner/managers to manage business financials, there is limited recognition that employing people attracts *complexity*. There is an opportunity to educate new SMEs on their compliance obligations (and where they can access support) when they create their business entity because this involves lodging paperwork with the Australian Taxation Office. Owner/managers reported a desire for compliance information to be 'pushed' to them and perhaps the Australian Taxation Office has a role to play in this proactive dissemination of compliance obligations and sources of reliable advice.

Secondly, whether legislation is perceived to be pro-employer (for example, WorkChoices) or pro-employee (for example, the FWA), the 'losing' party will seek to find 'workarounds' to redress the imbalance. Over the last few decades, industrial legislation in Australia and around the world has attempted to fetter the common law master/servant relationship and provide greater protection and security for employees. In response, employers have sought to mitigate their risk through reliance on casual employment, fixed term contracts, outsourcing, part-time employment, agency personnel, and probation periods to reduce the risk of unfair dismissal exposure and to enable them to 'hire and fire' without ramification. That is, if a formal mechanism exists and is perceived to be unfair, constraining or costly to an employer; informal practices will emerge to counteract the perceived inequity.

Thirdly, unfair dismissal is an area of the FWA that was found to cause the greatest contention and claims of employee bias. There was also evidence of the payment of 'go away money' at conciliation and reports of increased unfair dismissal claims. Annual reports by the Fair Work Commission (and its predecessors the Australian Industrial Relations Commission and Fair Work Australia) between 2003/2004 and 2014/15 report an increase in unfair dismissal claims under the FWA and supports the findings of the research. A report by the Australian Government Productivity Commission (2015) recognised concerns of 'go away money' and recommended a two-stage test which would first require the Fair Work Commission to assess if there were a valid reason for dismissal before lodging the matter with the employer. While a two-staged unfair dismissal process would not be without

challenges, there would be value in the federal Government further pursuing the feasibility of this recommendation by the Australian Government Productivity Commission.

Finally, owner/managers were found to be genuine in their belief that employers and employees could negotiate independently without the need for external 'interference'. The unequal power balance between the parties was not considered by owner/managers and while 'good' employers will no doubt do the right thing by their employees, some employers will not. Owner/managers are bottom line focused and salaries can represent a major expenditure for some SMEs. Without regulation, owner/managers will not always do the right thing and employees who are in less demand or without unique skills would arguably be exposed and unprotected.

7.7 Implications for Future Research

The limitations of this research provide a natural platform for further research and these are now summarised as follows.

7.7.1 Quantitative Research

Qualitative research provides in-depth findings into the experiences and beliefs of the participants. A limitation is that a relatively small percentage of the research cohort is represented in the research. This presents an opportunity for a quantitative study of a larger SME cohort across multiple industry sectors and States and Territories across Australia. Using quantitative methodology, the superordinate themes identified in this current study can be measured through development of a questionnaire constructed to test the applicability of the findings across a broader SME population. Confirmatory factor analysis in quantitative research is used in social research to test a hypothesis, confirm theories, and examine frameworks (Vogt 2005) such as that which emerged from this research.

In this further quantitative research, there is also an opportunity to test the causal relationships between identified superordinate themes and related categories.

7.7.2 Employee Research

This research sought to represent owner/managers' experiences, challenges and perspectives in the navigation of their employment-related legislative obligations. There would be value in undertaking qualitative research to understand the experience of SME employees in the employer/employee relationship and the degree to which they perceive their employer is meeting their employment-related legislative obligations. This research would provide insight into the power relationship in an SME and the degree to which employees believe they are able to challenge non-compliance.

7.7.3 SME Characteristics

In this research, data relating to the tenure of the business and the number of employees were collected. However, these data were not used specifically in the data analysis in that the findings were not analysed and reported by tenure and employee count. There may be value

in pursuing further research that provides insight into the impact of SME characteristics on employment-related legislative compliance. Such research could provide further insight into matters such as affordability challenges for small employers, as well as examining other factors that influence *effort* to comply. These factors could include owner/manager educational level, tenure, employee skill level, and workforce demand and supply. Rather than consider SMEs as a homogenous group, this research could provide findings that would assist Stakeholders to tailor support for specific segments of the SME cohort. The inclusion of such variables would also be beneficial in the follow-up quantitative research referred to in Section 7.6.1 of this Chapter.

7.7.4 Employment-Related Compliance versus Australian Taxation Office Compliance

Interviews with owner/manager participants found that even the smallest business had regular access to an accountant. Nonetheless, access to employment-related legislative expertise was significantly less common. There is an opportunity to undertake research to understand why SME owner/managers engage accountants, but avoid engaging employment related fee-for-service support. Some suppositions are provided for further research consideration:

- 1 Australian Taxation Office reporting is regular and monitored and the onus is on the SME owner/manager to complete complex returns on a regular basis.
- 2 As a rule, Australian Taxation Office pecuniary penalties are immediate and not subject to conciliation or arbitration.
- 3 The Australian Government is more rigorous in monitoring compliance with Australian Taxation Office legislation because non-compliance has a direct impact on Government revenue collection (when compared to the impact of the under payment of an employee).

There remains a paucity of research into employment-related legislative compliance by SMEs in Australia. This is despite over 68 per cent of Australian employees being employed by an SME (Parliament of Australia 2015). At the same time, workplace relations is a consistent 'hot topic' in Federal elections, which are often won or lost on associated campaigns and policies. There is therefore an opportunity for further research to better guide and inform Stakeholders by providing an objective view of experiences and opportunities with employment-related legislative compliance in the workplace.

7.8 Theoretical Perspectives for Future Studies

Studies into SME owner/manager compliance with legislative and regulatory obligations have predominantly employed quantitative research. This prior quantitative research used survey instruments to collect data from respondents electronically, rather than testing findings from associated qualitative studies. Additionally, data on compliance with employment-related legislative compliance often represents the SME owner/manager perspectives; future research lends itself to consideration of employees' perspectives.

Further application of a phenomenological research design to understand the lived experiences of SME employees, will extend this current research. For example a case study

approach may be used to study both employer and employee responses to employment-related legislative compliance.

Hypothetical vignettes can also be utilised in further research into employment-related legislative compliance in SMEs. The use of vignettes allows participants to respond to a scenario relevant to the research (Given 2008). Vignettes have the potential to augment this current study by gathering participants' 'real' responses; enabling subsequent comparison of actual versus theoretical data

7.9 Ethical Issues

This research adhered to all ethical practices and procedures as provided by Curtin University guidelines. Participants in the research were provided with informed consent forms and these forms were signed before the interviews commenced. Copies of the informed consent forms were retained as part of the research audit trail. All participants were provided with a code in lieu of their name and company details, and this applied to both Stakeholders and owner/managers. Only the researcher had access to the code cross reference table and this approach provided anonymity for the participant. Given the sensitive nature of the research, participant information is not included in this publication, nor will it be shared in future publications. All interview transcripts will be held in a secure location on the Curtin University research ('R') drive for a seven year period and only accessible by the researcher.

7.10 Summary

In this Chapter, the emergent findings into how SME owner/managers navigate employment-related legislative obligations have been summarised. These findings extended to owner/manager awareness and use of available resources, their willingness to comply, and the perceived cost of compliance. Stakeholder perceptions of owner/manager experiences and behaviours were also addressed. The findings provided insights for Stakeholders; in particular Government agencies and Employer Associations, and these opportunities were discussed in the context of observations and recommendations.

The limitations of the research were discussed and opportunities for further research outlined. Opportunities to extend this current research were presented with reference to the limitations and included future research with the potential to further inform Stakeholders with regard to employment-related legislative considerations for the future.

Recommendations are offered for Government agencies that provide employment-related legislative compliance support; and also perform a regulatory and enforcement role. Opportunities for greater proactivity by the Australian Government were provided and a formalisation of the role of industry associations was also recommended.

By achieving a better understanding of the employment-related legislative compliance challenges experienced by SMEs, this research seeks to provide information that can be used to inform Stakeholders and further improve support and resource delivery for the future. In the words of one participant:

“I suppose from a small business point of view, not many would pay a lot of money to go and see a lawyer or a consultant. They would be looking at ways of getting that information for nothing. They wouldn’t spend a lot of time on it, and the main reason for that is that there is a lot of other stuff as well and you’ve only got so many hours in the day.” (R15).

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8.2 Legislation

Age Discrimination Act 2004 (Cth)

Disability Discrimination Act 1992 (Cth)

Equal Opportunity Act 1984 (WA)

Fair Work Act 2009 (Cth)

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)

Industrial Relations Act 1979 (WA)

Occupational Safety and Health Act 1984 (WA)

Racial Discrimination Act 1975 (Cth)

Sex Discrimination Act 1984 (Cth)

Small Business Fair Dismissal Code (Cth)

United Kingdom Disability Discrimination Act 1995

United States Fair Labor Standards Act 1938

United States Family and Medical Leave Act 1993

Work Health and Safety Act 2011 (Cth)

Workers Compensation and Injury Management Act 1981 (WA)

Workplace Relations Act 1996 (Cth)

Workplace Relations Amendment (Work Choices) Act 2005 (Cth)

Workplace Relations Legislation Amendment (Independent Contractors) Act 2006 (Cth)

Work Health and Safety Bill 2014 (WA)

8.3 Case Law

4 Yearly Review of Modern Awards – Plain Language [2016] FWCFB 5621

Eskaf v J & L Salons P/L t/a Julise Beauty Therapy [2015] FWC 4890

Fair Work Ombudsman v Bosen Pty Ltd and Others (Industrial) [2011] VMC 21

Fair Work Ombudsman v Global Work and Travel Co. Pty Ltd & Ors [2015] FCCA 495

Fair Work Ombudsman v Jooine (Investment) Pty Ltd & Anor [2013] FCCA 2144

Fair Work Ombudsman v Kentwood Industries Pty Ltd (No 3) [2011] FCA 579

Fair Work Ombudsman v Naomi-Jayne Aldred [2016] FCCA 220

Fair Work Ombudsman v Quest South Perth Holdings [2015] HCA 45

Gilroy v Angelov [2000] FCA 1775

Langer v Robert Quinn t/a Pyrmont Car Store [2014] FWC 7460

McConnell v Terry White Chemists Victoria Point [2015] FWC 4060

On Call Interpreters and Translators Agency Pty Ltd v Commissioner of Taxation (No 3)
[2011] FCA 366

Smith v Pedro Kayias P/L t/a Pete's Vehicle Transport [2014] FWC 8798

Workplace Ombudsman v Saya Cleaning Pty Ltd & Anor [2009] FMCA 38

Transitional Provisions

Introduction to Transitional Provisions

The modern awards were introduced to provide a uniform set of conditions for employers and employees working in the same industries and occupations. Prior to the modern awards, there were around 1500 industry and occupational awards at state and federal level each with different terms and entitlements. The award modernisation process reduced the amount of awards to 122 modern awards.

The modern awards came into effect from 1 January 2010. In many cases, the modern awards increased or decreased entitlements, therefore disadvantaging either the employee through lower wages, or employers through higher wage costs. The model transitional provisions were created by the Australian Industrial Relations Commission (now known as Fair Work Australia (FWA)) in the award modernisation process to give employers and employees time to adjust to these changes. The transitional arrangements only affect certain modern award entitlements. All other modern award entitlements/conditions, including overtime and allowances (other than industry allowances), apply in full from 1 January 2010.

There are two categories of transitional provisions; the model transitional provisions and the 'specific transitional provisions'. The majority of modern awards contain the model transitional provisions and these are discussed in detail below. In addition to these transitional provisions, some modern awards contain other transitional provisions which preserve a pre-modern award (PMA) condition or entitlement for a specified transitional period. For example, clauses on redundancy and accident make-up pay. These clauses are not part of the model transitional provisions.

Model Transitional Provisions

The model transitional provisions provide for the phasing in of any difference between the PMA entitlement and the modern award entitlement over four years, commencing on the first full pay period on or after 1 July 2010 and ending after the first full period after 1 July 2014.

The difference between the PMA entitlement as at 31 December 2009 and the modern award entitlement as at 1 January 2010 is known as the 'transitional amount'.

The following monetary entitlements are subject to the model transitional provisions:

- minimum wages, piecework rates and applicable industry allowances;
- casual and part-time loadings;

- Saturday, Sunday, public holiday, evening and other penalties; and
- shift allowance / penalties

This means that between 1 January 2010 and 30 June 2010, employers continued to apply the minimum wages, piecework rates and applicable industry allowances; casual and part-time loadings; weekend, public holiday, evening penalties and shift allowances/penalties from the PMA. Where the model transitional provisions apply to a modern award, the model transitional provisions will be situated in a schedule of the award. It is important to note that not all modern awards contain the model transitional provisions schedule. As some awards contain industry specific transitional provisions, for example the *Cleaning Services Award 2010* (MA000022), or no transitional provisions at all, it is important to check the modern award to determine what transitional provisions need to be applied, if any.

Model Transitional Provisions – Principles

Any difference between the PMA entitlement, as at 31 December 2009, and the modern award entitlement, as at 1 January 2010, is known as the 'transitional amount'. The model transitional provisions provide for the 'phasing in' of the transitional amount in five 20% instalments over four years, beginning from the first full pay period on or after 1 July 2010 and ending at the first full pay period on or after 1 July 2014. This means that until 1 July 2014, wage, loading and penalty entitlements under modern awards will change on the first pay period on or after 1 July each year, and need to be re-calculated accordingly.

How are transitional wage rates calculated?

The first step to calculate transitional base rates is to identify the relevant employee's PMA classification and modern award classification. If the classifications are not accurately identified, the wrong base rates of pay would be compared, resulting in an incorrect assessment of the transitional minimum wage entitlement.

To accurately identify the relevant classification under the PMA and modern award, the nature of the duties being performed must be considered. Occupation, skills, competency and level of responsibility are also relevant factors to consider. It is important to note that definitions of classifications and/or job titles may vary between the PMA and modern award. For example, work classified under the PMA as a 'level 2', may be classified as a 'level 3' under the modern award. Where there are sub-classifications based on years of experience, the relevant sub-classification will also have to be considered.

When comparing base rate to use the PMA base rate a modern award rate as at 1 January 2010, the applicable industry allowance award, will need to be included. In the case of juniors, apprentice pay are often expressed as a percentage of the modern award rate. Therefore the first step in calculating the modern award rate is to calculate the dollar amount of the 2010 modern award rate. This rate will be ascertained by comparing the PMA rate (as at 31 December 2009) and the modern award rate (as at 1 January 2010). Once both the PMA rate and the modern award rate have been identified, the 'transitional amount' will be calculated. Any annual wage increases are then applied, and the 'transitional amount' is added to or subtracted from the modern award rate that applies from any annual wage increases.

First full pay period on or after

- 1 July 2010
- 1 July 2011
- 1 July 2012
- 1 July 2013
- 1 July 2014

If the modern award rate is less than the PMA rate, the modern award rate is increased by adding the proportion of the transitional amount to the modern award rate. If the modern award rate is more than the PMA rate, the modern award rate is decreased by subtracting the proportion of the transitional amount from the modern award rate.

FWA have the responsibility to review award rates annually. FWA minimum wages are reviewed on 1 July of each year, effective from 1 July commencing on or after the first full pay period. This affects the transitional amount. The modern award rate will be increased or decreased by the transitional amount.

The transitional amount for the modern award rate stays the same every year. The modern award rate will be increased or decreased by the transitional amount.



The Fair Work Ombudsman (FWO) is committed to providing useful, reliable information to help you understand your rights and obligations under workplace laws. The information contained in this publication is general in nature and may not deal with all aspects of the law that are relevant to your specific situation; and not legal advice. Therefore, you may wish to seek independent professional advice to ensure all the factors relevant to your circumstances have been properly considered. This information was published on 11 April, 2011. The FWO does not accept legal liability arising from or connected to the accuracy, reliability, currency or completeness of this information.

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In this worked example the PMA rate of pay is \$20. The modern award rate is \$19. The PMA rate is then subtracted from the modern award rate (\$19-\$20) resulting in a 'transitional amount' of (-) \$1. 80% of the transitional amount is 80 cents. Ignoring any FWA wage reviews, the transitional rate of pay is calculated by adding 80% of the transitional amount to the modern award rate of pay (\$0.80 + \$19).

An example of where the modern award rate is higher than the PMA rate including a FWA minimum wage review for 1 July 2010

Pre-modern wage rate (31 December 2009) =	\$730
Modern award wage rate as at 1 Jan 2010 =	\$780
Transitional amount (\$780 - \$730) =	\$50
Wage rate payable from 1 July 2010 =	\$806
Transitional amount (80% x \$50) =	\$40
Transitional wage rate of pay at 1 July 2010 (\$806 - \$40) =	\$766

In this worked example the PMA rate of pay is \$730. The modern award rate is \$780. The PMA rate is then subtracted from the modern award rate (\$780-\$730) to determine the 'transitional amount' of \$50. The minimum wage is then added to the modern award rate (\$780 + \$26). The new modern award rate is \$806 however the transitional amount remains at \$50. 80% of the transitional amount is \$40 (80% x \$50). To calculate the transitional wage rate, subtract \$40 from the modern award rate of pay (including the annual wage increase) (\$806 - \$40) The transitional wage rate of pay at 1 July 2010 is \$766 per week (\$806 - \$40).

An example of where the modern award rate is lower than the PMA rate including a FWA minimum wage review for 1 July 2010

Pre-modern wage rate as at 1 Jan 2010 =	\$780
Modern award wage rate as at 1 Jan 2010 =	\$730
Transitional amount (\$730 - \$780) =	(-) \$50
Wage rate payable from 1 July 2010 =	\$756
Transitional amount (80% x \$50) =	\$40
Transitional wage rate of pay at 1 July 2010 (\$756 + 40) =	\$796

In this worked example the PMA rate of pay is \$780. The modern award rate as at 1 January 2010 is \$730. The PMA rate is then subtracted from the modern award rate (\$730-\$780) resulting in a 'transitional amount' of (-) \$50.

The annual wage increase is then added to the modern award rate (\$730 + \$26). The new modern award rate is \$756 however the transitional amount remains at \$50.

80% of the transitional amount is \$40 (80% x \$50). To calculate the transitional wage rate, add \$40 to the modern award rate of pay (including the annual wage increase) (\$40 + \$756). The transitional wage rate as at 1 July 2010 is \$796 per week.

An example of where the modern award rate is lower than the PMA rate including a FWA minimum wage review that is greater than the transitional amount for 1 July 2010

Pre-modern wage rate as at 1 Jan 2010 =	\$800
Modern award wage rate as at 1 Jan 2010 =	\$780
Transitional amount (\$780 - \$800) =	(-) \$20
Wage rate payable from 1 July 2010 =	\$806
No transitioning applies	
Wage rate from 1 July 2010 =	\$806

In this worked example the PMA rate of pay is \$800. The modern award rate as at 1 January 2010 is \$780. The PMA rate is then subtracted from the modern award rate (\$780-\$800) resulting in a 'transitional amount' of \$20. The annual wage increase then added to the modern award rate (\$780 + \$26). The new modern award rate is \$806. As this amount is above the PMA rate as at 1 January 2010, no transitioning is required and the modern award rate applies in full from the first full pay period on or after 1 July 2010.

How are the transitional penalties, loadings and shift allowances calculated?

The model transitional provisions dictate that wages must be calculated separately to loadings and penalties. This is because the transitional provisions are not looked at cumulatively, but rather, each entitlement is assessed independently. As outlined above, the calculation principles essentially rely on ascertaining what monetary entitlements would have applied to the employee under the PMA compared to those that now apply under the relevant modern award. In relation to loadings, penalties and shift allowances, it is important to determine whether the PMA entitlement and modern award entitlements are 'equivalent'. The FWO guidance paper provides for two different phasing requirements depending on whether the entitlements are equivalent or not equivalent.

When looking at whether the penalties or loadings are equivalent consideration must be given to whether the penalty or loading is applied for the same purpose, for the same

time period and in the same way. "Same way" means that the entitlement must be paid at the same frequency (such as per hour or per shift) and paid as a percentage of the same amount (e.g. both penalties are paid as a percentage of the employee's classification rate, rather than as a percentage of a different amount or paid as a flat dollar amount).

Under the model transitional provisions loadings and penalties are assessed for equivalency, which is whether they apply for the same time in the same manner, as at 1 January 2010. If the loadings and penalties are equivalent a comparison will then be required to ascertain if there is a difference in the amount or percentage of the loading or penalty.

Where no equivalency is found, phasing must be applied to the PMA entitlement and to the modern award entitlement independently. Where there is no equivalency the PMA entitlement is phased out (essentially from 100% down to 0%) and the modern award entitlement is phased in (essentially from 0% up to 100%) according to the table below:

First full pay period on or after	Percent of transitional entitlement
1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%
1 July 2014	0%

An example where the modern award casual loading is lower than the PMA casual loading

Pre-modern award casual loading -	30%
Modern award casual loading -	25%
30%-25% =	5%
5% broken into 5 installments =	1% per period:
July 2010	29%
July 2011	28%
July 2012	27%
July 2013	26%
July 2014	25% (parity)

In this basic example both penalties are equivalent. In this instance the PMA casual loading is 30% and the modern award casual loading is 25%. This results in a transitional amount between the two loadings of 5% (30%-25%). 80% of the transitional amount is 4% (80% x 5%). To calculate the transitional casual loading, add 4% to the modern award casual loading of 25%. The casual loading applicable as at the first full pay period commencing 1 July 2010 is 29%.

An example where the modern award casual loading is higher than the PMA casual loading (including a multi-component casual loading)

Pre-modern award casual loading -	10% base loading + 8.5% annual leave loading (applied to the base rate of pay)
Modern award casual loading -	25%
25% - 18.5% =	6.5%
6.5% broken into 5 installments =	1.3% per period.
July 2010	19.8%
July 2011	21.1%
July 2012	22.4%
July 2013	23.7%
July 2014	25% (parity)

In this example both penalties are equivalent. In this instance the PMA casual loading is 18.5% (10% + 8.5%) and the modern award casual loading is 25%. The transitional amount is 6.5% (25%-18.5%). 80% of the transitional amount is 5.2%. To calculate the transitional casual loading, subtract 5.2% from the modern award casual loading of 25%. The casual loading applicable as at the first full pay period commencing 1 July 2010 is 19.8%.

An example where the modern award penalty is not the same as than the PMA penalty

Pre-modern award night allowance -	\$5 per shift
Modern award night loading -	25%
Phase out old and phase in new	
\$5 per shift =	\$1 per period
25% =	5% per period
July 2010	\$4 per shift + 5%
July 2011	\$3 per shift + 10%
July 2012	\$2 per shift + 15%
July 2013	\$1 per shift + 20%
July 2014	25% (parity reached)

This example outlines the process to follow where there are non equivalent loadings / penalties. In this scenario the PMA penalty / loading is phased out and the modern award penalty is simultaneously phased in. Where a PMA penalty/loading no longer exists in a modern award; the PMA penalty is phased out to zero. Where a penalty/loading is introduced by the modern award and the same approach applies; the penalty / loading is phased in from zero. In the above example, the PMA penalty for working night shift was an additional dollar amount payable per night shift

worked. The modern award penalty for working a night shift is a loading that is applied as a percentage per hour worked for the duration of the shift. As the penalties are not equivalent, the PMA penalty of \$5 will have to be phased out, and the modern award night shift loading will have to be phased in from zero. To work out the night shift penalty as at 1 July 2010, 80% of the PMA penalty and 20% of the modern award night shift loading needs to be calculated. 80% of the PMA penalty is \$4 (80% x \$5). 20% of the modern award night shift loading is 5% (20% x 25%). Therefore as at July 1 2010, the employee must be paid an additional \$4 per night shift and a night shift loading of 5% per hour.

Transitional Provisions and Agreements

The *Fair Work Act 2009* contains a section (s206) that stipulates that the base rate of pay in an agreement cannot fall below that of the relevant modern award that would have covered that business / occupation. Essentially, businesses that have agreements in place that were lodged following the introduction of the modern awards have an obligation to maintain the base rate of pay equal to or above the relevant modern award rate, calculated in compliance with the transitional provisions. This comparison is done by comparing the base rates of pay. This is an additional requirement to passing the 'Better Off Overall Test'.

The *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* contains a schedule dealing with agreements lodged prior to the *Fair Work Act 2009* being introduced. Schedule 9 Part 4 of this Act stipulates that the rates of pay contained in an agreement-based transitional instrument (an agreement made prior to the *Fair Work Act 2009*) must not be less than the relevant modern award rate, calculated in compliance with the transitional provisions. This comparison is done by comparing the base rates of pay. In both instances, where the base rate of pay in the agreement falls below the relevant modern award base rate, the relevant modern award base rate will apply; calculated in accordance with the transitional provisions.

Compliance issues

It is the responsibility of the employer that calculation of both the wages and the loadings and penalties are accurate and in compliance with the model transitional provisions. These calculations will need to be calculated correctly each period, with annual wage reviews taken into account when calculating wages. Although accurate time and wage records have always been essential, they take on further importance due to the model transitional provisions. It is likely that some employees during the five transitional periods will change classification, change a sub-classification within a classification, or in the case of

apprentices, juniors or trainees will change sub-classification or age group. The model transitional provisions will apply to the classification of work relevant at the time, with the wages required to be calculated based on the transitional provisions using the 1 January 2010 transitional amount.

Take-home pay orders

Neither the making of modern awards nor the operation of the transitional arrangements is intended to result in a reduction in the take home pay of any employee. A take-home pay order can be applied for where an employee's pay is reduced, or is likely to be reduced, as a result of the introduction of a modern award. Take-home pay is defined as the pay an employee or outworker actually receives after tax and certain deductions such as salary sacrificing arrangements. It includes wages, allowances, overtime payments and any incentive-based payments. *The Fair Work Regulations 2009* have been amended to clarify the requirements for take-home pay orders. In order to obtain a take-home pay order, an employee or outworker must be eligible, and must complete the application process in writing to FWA. Only FWA has the power to consider a take-home pay order application. An application for a take-home pay order can be made by an employee or an employee representative who believes they have, will have or are likely to have a reduction in their take-home pay as a result of the introduction of a modern award. For more information regarding take home pay orders please contact FWA on 1300 799 365.

Conclusion

The model transitional provisions present businesses with a complex calculation obligation for the majority of their award covered employees. We have outlined in this document the most common model transitional provision obligations. In the circumstances that the model transitional provisions do not apply increased vigilance is required to ensure employees are paid correctly. It is imperative that businesses are aware of the multi-faceted calculation approach when advising/paying employees. Similarly, employees should be aware how to accurately calculate their entitlements. By correctly phasing both wages and loading/penalty entitlements this can be ensured. For assistance with classifying employees under the PMA and modern award please refer to the Classifying Employees Fact sheet.

If you would like any further information regarding this fact sheet or the *Clerks - Private Sector Award 2010*, please contact Ai Group's Fair Work Liaison Officer (fwlo_clerical@aigroup.asn.au).

In early 2011, the Fair Work Ombudsman (FWO) in conjunction with the Australian Industry Group (Ai Group) commenced a national education campaign on changes to the *Clerks - Private Sector Award 2010*. The campaign has been funded by the Australian Government through the Fair Work Ombudsman's Shared Industry Assistance Projects (SIAP) Grant Program, which aims to better inform employers (particularly small to medium businesses) about changes to modern awards applicable to their industry sector. Following a competitive selection process, Ai Group was one of 15 successful organisations selected to deliver the education campaign in conjunction with the FWO.



Fair Work
OMBUDSMAN



AUSTRALIAN
INDUSTRY
GROUP

The Fair Work Ombudsman (FWO) is committed to providing useful, reliable information to help you understand your rights and obligations under workplace laws. The information contained in this publication is general in nature and may not deal with all aspects of the law that are relevant to your specific situation; and not legal advice. Therefore, you may wish to seek independent professional advice to ensure all the factors relevant to your circumstances have been properly considered. This information was published on 11 April, 2011. The FWO does not accept legal liability arising from or connected to the accuracy, reliability, currency or completeness of this information.

APPENDIX B: SMALL BUSINESS FAIR DISMISSAL CODE



Australian Government

Small Business Fair Dismissal Code

Commencement

The Small Business Fair Dismissal Code came into operation on 1 July 2009.

Application

The Fair Dismissal Code applies to small business employers with fewer than 15 employees (calculated on a simple headcount of all employees including casual employees who are employed on a regular and systematic basis). Small business employees cannot make a claim for unfair dismissal in the first 12 months following their engagement. If an employee is dismissed after this period and the employer has followed the Code then the dismissal will be deemed to be fair.

Employees who have been dismissed because of a business downturn or their position is no longer needed cannot bring a claim for unfair dismissal. However, the redundancy needs to be genuine. Re-filling the position with a new employee is not a genuine redundancy. The requirements for determining whether a dismissal was a genuine redundancy are contained in section 389 of the Fair Work Act. The Small Business Fair Dismissal Code Checklist attached to this document can assist in determining whether a redundancy is a genuine redundancy.

Further information on the application of the Code, genuine redundancy and unfair dismissal is available at www.fairwork.gov.au or by contacting the Fair Work Infoline on 13 13 94.

The Code

Summary Dismissal

It is fair for an employer to dismiss an employee without notice or warning when the employer believes on reasonable grounds that the employee's conduct is sufficiently serious to justify immediate dismissal. Serious misconduct includes theft, fraud, violence and serious breaches of occupational health and safety procedures. For a dismissal to be deemed fair it is sufficient, though not essential, that an allegation of theft, fraud or violence be reported to the police. Of course, the employer must have reasonable grounds for making the report.

Other Dismissal

In other cases, the small business employer must give the employee a reason why he or she is at risk of being dismissed. The reason must be a valid reason based on the employee's conduct or capacity to do the job.

Updated 1 January 2011

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The Checklist is Fair Dismissal C complied with, completing the for dismissing a the time of dism

Employers should their procedural in complying w

1. How many emp employee dism
 Under 15
 15 emplo

[If under 15 emplo

2. Has the employ for 12 months
 Yes
 No

[If No, the employ

3. Did you dismiss the employee because you didn't require the person's job to be done by anyone because of changes in the operational requirements of the business?

- Yes
- No

If Yes	YES	NO
a. Did you comply with any requirements to consult about the redundancy in the modern award, enterprise agreement or other industrial instrument that applied to the employment?	<input type="checkbox"/>	<input type="checkbox"/>
b. Did you consider if the employee could have been redeployed in your business or the business of an associated entity?	<input type="checkbox"/>	<input type="checkbox"/>

4. Do any of the following statements apply?

I dismissed the employee because I believed on reasonable grounds that	YES	NO
a. The employee was stealing money or goods from the business.	<input type="checkbox"/>	<input type="checkbox"/>
b. The employee defrauded the business.	<input type="checkbox"/>	<input type="checkbox"/>
c. The employee threatened me or other employees, or clients, with violence, or actually carried out violence in the workplace.	<input type="checkbox"/>	<input type="checkbox"/>
d. The employee committed a serious breach of occupational health and safety procedures.	<input type="checkbox"/>	<input type="checkbox"/>

5. Did you dismiss the employee for some other form of serious misconduct?

- Yes
- No

If Yes, what was the reason?

If you answered Yes to any question in parts 3, 4 or 5, you are not required to answer the following questions.

Updated 1 January 2011

6. In any discussion with the employee where dismissal was possible, did the employee request to have a support person present, who was not a lawyer acting in a professional capacity?

- Yes
- No

7. If Yes, did you agree to that request?

- Yes
- No

8. Did you dismiss the employee because of the employee's unsatisfactory conduct, performance or capacity to do the job?

- Yes
- No

If Yes	YES	NO
a. Did you clearly warn the employee (either verbally or in writing) that the employee was not doing the job properly and would have to improve his or her conduct or performance, or otherwise be dismissed?	<input type="checkbox"/>	<input type="checkbox"/>
b. Did you provide the employee with a reasonable amount of time to improve his or her performance or conduct? If yes, how much time was given?	<input type="checkbox"/>	<input type="checkbox"/>
c. Did you offer to provide the employee with any training or opportunity to develop his or her skills?	<input type="checkbox"/>	<input type="checkbox"/>
d. Did the employee subsequently improve his or her performance or conduct?	<input type="checkbox"/>	<input type="checkbox"/>
e. Before you dismissed the employee, did you tell the employee the reason for the dismissal and give him or her an opportunity to respond?	<input type="checkbox"/>	<input type="checkbox"/>
f. Did you keep any records of warning(s) made to the employee or of discussions on how his or her conduct or performance could be improved? Please attach any supporting documentation.	<input type="checkbox"/>	<input type="checkbox"/>

Updated 1 January 2011

9. Did you dismiss the employee for some other reason?

- Yes
- No

If Yes, what was the reason?

10. Did the employee voluntarily resign or abandon his or her employment?

- Yes
- No

If Yes, please provide details

DECLARATION

I declare that I believe every statement or response in this checklist to be true.

Signature

Date

Updated 1 January 2011

APPENDIX C: INFORMED CONSENT

Consent form for individual respondents

- I voluntarily agree to participate in the research interview where the research focus is “compliance with employment legislation: challenges for small and medium businesses in WA”.
- I have been offered sufficient information relating to the purpose of the interview and expectations of the participant. I am aware that I may ask questions at any stage based on any aspect of the study and have understood all information provided.
- I am aware that all personal information on participants will remain strictly confidential and I will not be personally identified in any stage of the research.
- I am aware that the interview will be recorded and analysed for the purpose of primary research. I understand that I have the ability to revoke components of the recording and at the completion of the study all audio recordings from the interview will be destroyed.
- I understand that I have the ability to withdraw from the interview at any time or rescind my participation from the study entirely or partly without obligation or prejudice.
- I hereby confirm that I have read and understood the above and liberally consent to participating in this interview. I have been provided with sufficient time to contemplate my involvement and completely agree to fulfil participatory expectations.

Name of Participant

Signed

Date

Name of Researcher

Signed

Date

APPENDIX D: INTERVIEW PACK SEMI STRUCTURED INTERVIEWS – STAKEHOLDERS

Respondent Information Sheet and Informed Consent

1. Research Objectives

The research seeks to determine SME experience and costs in complying with employment-related legislative obligations. Such knowledge can be utilised by Governments when introducing legislative changes that are complex or transformational. It is hoped that factors such as lead time, support and transitional arrangements will be considered by the stakeholders that seek to assist both employers and employees with employment-related legislative changes. Finally, the research seeks to establish SME knowledge and usage of existing support services; it also seeks to establish what other support services SME's desire and whether or not they would avail themselves of such services.

2. Involvement of Respondents

Respondents will be asked a series of open ended semi-structured questions that seek to establish their experiences in relation to the research objectives. Interviews will occur at the respondents place of work; or at an alternate venue as requested by the respondent.

3. Confidentiality and Security of Information

Data storage will comply with the Australian Code for the Responsible Conduct of Research and the *Freedom of Information Act 1992 (WA)*. During the study source material such as interview notes and audio tapes will be held in secure storage in the Graduate School of Business; access will be restricted to the researcher, supervisor and co-supervisor. Additionally, all hard copy and audio materials will be transcribed into electronic format; all electronic material and databases will be stored on the University network and one copy will be retained by the researcher. Access will be by authorised user and remote access will be enabled for the researcher in order to limit off line access. If off line access is required from time to time, synchronisation with the master (networked) version will occur immediately on line access is enabled.

Interviews will be undertaken using file references that correlate with a participant key; these documents will be stored separately (both hard copy and electronic sources). Only the category description of the participant will be referenced in research material; the researcher will be the only individual with access to the key that links the file reference and category description with the participant's identity.

Once the research is complete, data will continue to be maintained electronically for five years and in a format that enables validation of the research. One copy of the data will be held on the University network and one copy will be retained by the researcher on a USB (the USB will be refreshed annually throughout the five year period and stored in a home safe). A decision on how hard copy source material will be managed at the end of the study is still to be decided, however, will comply with the Australian standards and legislation.

4. Outcomes for Respondents

There are no identifiable risks to participants as anonymity will be achieved. However, there is the potential for benefits to participants in that the research objectives include the development of recommendations for stakeholders (Government, Unions and Employer Associations) to expand support for SMEs in their understanding of and compliance with employment-related legislation.

5. Contact Information

5.1 Researcher

Eileen Aitken-Fox (Student Number 08442697)

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Tel: 0417 928 069

5.2 Supervisor

Associate Professor Verena Marshall

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Tel 9266 3236

5.3 Associate Supervisor

Professor Alison Preston

Alison.Preston@gsb.curtin.edu.au

Tel 9266 7900

5.4 Ethics Contact

Human Research Ethics Committee (Secretary)

hrec@curtin.edu.au

Tel 9266 2784

6. Research Approval

This research was approved by the Curtin University Human Research Ethics Committee on **20th August 2012**; approval number **GSB 13-12**.

7. Informed Consent

Refer below.

**RESEARCH FOCUS: “COMPLIANCE WITH EMPLOYMENT LEGISLATION:
CHALLENGES FOR SMALL AND MEDIUM BUSINESSES IN WA”.**

Consent form for individual respondents

- I voluntarily agree to participate in the research interview where the research focus is “compliance with employment legislation: challenges for small and medium businesses in WA”.
- I have been offered sufficient information relating to the purpose of the interview and expectations of the participant. I am aware that I may ask questions at any stage based on any aspect of the study and have understood all information provided.
- I am aware that all personal information on participants will remain strictly confidential and I will not be personally identified in any stage of the research.
- I am aware that the interview will be recorded and analysed for the purpose of primary research. I understand that I have the ability to revoke components of the recording and at the completion of the study all audio recordings from the interview will be destroyed.
- I understand that I have the ability to withdraw from the interview at any time or rescind my participation from the study entirely or partly without obligation or prejudice.
- I hereby confirm that I have read and understood the above and liberally consent to participating in this interview. I have been provided with sufficient time to contemplate my involvement and completely agree to fulfil participatory expectations.

Name of Participant

Signed

Date

Name of Researcher

Signed

Date

8. Interview

Introduction

Good morning (afternoon). My name is Eileen Aitken-Fox and I am a PhD Candidate at the Curtin Graduate School of Business. Thank you for agreeing to meet with me.

As a Business/Government/Union stakeholder involved with employers and/or employees from small and medium enterprises (SME's) in WA, you have been identified as someone who may be able to share your experiences and knowledge concerning SME approaches to compliance with employment law (Fair Work Act, WA Industrial Relations Act, Health and Safety, Workers Compensation, Discrimination etc).

My primary research will involve meeting with owner/managers of SME's with a view to discussing their experiences, knowledge, abilities and use of available support services in meeting their employment law obligations. However, before meeting with SME's direct, I am meeting with a number of stakeholders from Business, Government and Unions to discuss their experience and observation of SME approaches to employment law compliance. Additionally, I would be interested in discussing my approach to identifying SME's for involvement in the research.

Compliance with employment law is critical for both employees and employers and has had limited independent focus to date. Your assistance will be invaluable to this research that has the objective of identifying opportunities for stakeholders (Government, Industry and Unions) to expand support for SMEs in order to promote success in their understanding of and compliance with employment-related legislation; a win win for employees and employers.

There are no right or wrong or desirable or undesirable answers. I would like you to feel comfortable with saying what you really think and how you really feel. To facilitate our note-taking, and as a requirement of our assignment, I will be recording our conversations here today. I assure you that only the researchers on this project will be privy to the recordings which will be destroyed after our research has concluded. Before we get started, please take a few minutes to read and sign this preamble. Essentially these documents state that (1) all information will be held confidential, (2) your participation is voluntary and you may stop whenever you feel uncomfortable, and (3) we do not intend to inflict any harm. Thank you again for participating.

8.1 Demographic Questions

- Name
- Title
- Organisation
- Category (Employer Body, Government, Union)

8.2 Interview Themes

8.2.1 SME Awareness

Can you tell me about your experience with SME's on their awareness of their employment law obligations?

Prompts

- What, if any, are the difference in knowledge levels between employers still operating under the *Industrial Relations Act 1979 (WA)* and the *Fair Work Act 2009 (Cth)*?
- What is the general level of understanding of Discrimination Legislation; State and Federal?
- What is your experience with SME's and their Health and Safety obligations?
- In your experience, what knowledge exists with respect to common law obligations/exposure (duty of care, breach of contract, mutual trust etc)

8.2.2 SME Inclination to Comply

Can you tell me about your experience with SME's regarding their inclination to comply with their employment law obligations?

Prompts

- In your opinion, what inhibitors to compliance exist for SME's

8.2.3 SME Concerns with Compliance

In your experience with SME's, what areas of compliance cause the greatest concern?

8.2.4 SME Requests for Advice

When SME's approach you for help, what do they ask?

8.2.5 SME Cost of Compliance

In your experience, is compliance with employment law obligations expensive for SME's?

Prompts

- What types of costs exist?

8.2.6 SME Level of Confidence

How confident are SME's in their ability to comply with their employment law obligations?

8.2.7 SME Awareness of Pecuniary Penalties

What changes over the last 2 years have you seen in SME's in their actions/awareness to comply with their employment law obligations?

Prompts

- What is their awareness of the increased scrutiny by the Fair Work Ombudsman?

8.2.8 SME Awareness of Support

Where to SME's go for help?

Prompts

- Are they aware of the FWO Fact Sheets, Educations Forum's, Employer Bodies (COSBOA) etc?

8.2.9 Examples

Do you have any further examples of SME experiences that you would like to share?

8.3 Access to Member Database

This research involves identifying Retail, Hospitality and Resource SME's for involvement in one on one semi structured interviews. Would you be able to assist in providing access to potential interviews?

APPENDIX E: INTERVIEW PACK SEMI STRUCTURED INTERVIEWS – OWNER MANAGER

Respondent Information Sheet and Informed Consent

1. Research Objectives

The research seeks to determine SME experience and costs in complying with employment-related legislative obligations. Such knowledge can be utilised by Governments when introducing legislative changes that are complex or transformational. It is hoped that factors such as lead time, support and transitional arrangements will be considered by the stakeholders that seek to assist both employers and employees with employment-related legislative changes. Finally, the research seeks to establish SME knowledge and usage of existing support services; it also seeks to establish what other support services SME's desire and whether or not they would avail themselves of such services.

2. Involvement of Respondents

Respondents will be asked a series of open ended semi-structured questions that seek to establish their experiences in relation to the research objectives. Interviews will occur at the respondents place of work; or at an alternate venue as requested by the respondent.

3. Confidentiality and Security of Information

Data storage will comply with the Australian Code for the Responsible Conduct of Research and the *Freedom of Information Act 1992 (WA)*. During the study source material such as interview notes and audio tapes will be held in secure storage in the Graduate School of Business; access will be restricted to the researcher, supervisor and co-supervisor. Additionally, all hard copy and audio materials will be transcribed into electronic format; all electronic material and databases will be stored on the University network and one copy will be retained by the researcher. Access will be by authorised user and remote access will be enabled for the researcher in order to limit off line access. If off line access is required from time to time, synchronisation with the master (networked) version will occur immediately on line access is enabled.

Interviews will be undertaken using file references that correlate with a participant key; these documents will be stored separately (both hard copy and electronic sources). Only the category description of the participant will be referenced in research material; the researcher will be the only individual with access to the key that links the file reference and category description with the participant's identity.

Once the research is complete, data will continue to be maintained electronically for five years and in a format that enables validation of the research. One copy of the data will be held on the University network and one copy will be retained by the researcher on USB (the USB will be refreshed annually throughout the five year period and stored in a home safe). A decision on how hard copy source material will be managed at the end of the study is still to be decided, however, will comply with the Australian standards and legislation.

4. Outcomes for Respondents

There are no identifiable risks to participants as anonymity will be achieved. However, there is the potential for benefits to participants in that the research objectives include the development of recommendations for stakeholders (Government, Industry and Unions) to expand support for SMEs in their understanding of and compliance with employment-related legislation.

5. Contact Information

5.1 Researcher

Eileen Aitken-Fox (Student Number 08442697)

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5.2 Supervisor

Associate Professor Verena Marshall

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Tel 0417 946 674

5.3 Associate Supervisor

Associate Professor Therese Jefferson

therese.jefferson@gsb.curtin.edu.au

Tel 9266 3724

5.4 Ethics Contact

Human Research Ethics Committee (Secretary)

hrec@curtin.edu.au

Tel 9266 2784

6. Research Approval

This research was approved by the Curtin University Human Research Ethics Committee on **20th August 2012**; approval number **GSB 13-12**.

7. Informed Consent

Refer below.

**RESEARCH FOCUS: “COMPLIANCE WITH EMPLOYMENT LEGISLATION:
CHALLENGES FOR SMALL AND MEDIUM BUSINESSES IN WA”.**

Consent form for individual respondents

- I voluntarily agree to participate in the research interview where the research focus is “compliance with employment legislation: challenges for small and medium businesses in WA”.
- I have been offered sufficient information relating to the purpose of the interview and expectations of the participant. I am aware that I may ask questions at any stage based on any aspect of the study and have understood all information provided.
- I am aware that all personal information on participants will remain strictly confidential and I will not be personally identified in any stage of the research.
- I am aware that the interview will be recorded and analysed for the purpose of primary research. I understand that I have the ability to revoke components of the recording and at the completion of the study all audio recordings from the interview will be destroyed.
- I understand that I have the ability to withdraw from the interview at any time or rescind my participation from the study entirely or partly without obligation or prejudice.
- I hereby confirm that I have read and understood the above and liberally consent to participating in this interview. I have been provided with sufficient time to contemplate my involvement and completely agree to fulfil participatory expectations.

Name of Participant

Signed

Date

Name of Researcher

Signed

Date

Interview

Introduction

My name is Eileen Aitken-Fox and I am a PhD Candidate at the Curtin Graduate School of Business. Thank you for agreeing to meet with me.

As a small and medium enterprise (SME) in WA in the Retail/Hospitality/ Resource Sector you have been identified as being in a position to share your experiences in complying with employment related legislative obligations (*Fair Work Act, WA Industrial Relations Act, Health and Safety, Workers Compensation, Discrimination* etc).

Compliance with employment law is critical for both employees and employers and has had limited independent focus to date. Your assistance will be invaluable to this research that has the objective of identifying opportunities for stakeholders (Government, Industry and Unions) to expand support for SMEs in order to promote success in their understanding of and compliance with employment-related legislation; a win win for employees and employers.

There are no right or wrong or desirable or undesirable answers. I would like you to feel comfortable with saying what you really think and how you really feel. To facilitate our note-taking, and as a requirement of our assignment, I will be recording our conversations here today. I assure you that only the researchers on this project will be privy to the recordings which will be destroyed after our research has concluded. Before we get started, please take a few minutes to read and sign this preamble. Essentially these documents state that (1) all information will be held confidential, (2) your participation is voluntary and you may stop whenever you feel uncomfortable, and (3) we do not intend to inflict any harm. Thank you again for participating.

7.1 Demographic Questions

- Name
- Title
- Organisation
- Operating Location (s)
- Organisational Structure
- Company Status (Sole Trader, Partnership, Pty Ltd)
- Jurisdictional Coverage

7.2 Stratified Matrix

Tenure/Years in Business	< 1 Year 1 -2 Years 2- 3 Years 3 – 5 Years 5 – 10 Years 10 – 15 Years > 20 Years
Number of Employees	4
Sector	Resource – Core Business Resource – Supplier to Resource Sector Retail Hospitality
Prior Dispute History?	
Prior Audit History?	
Family Only	
Prior Experience in a Large Business?	
Member of Employer Body (CCIWA etc)	

7.3 Interview Questions

7.3.1 SME Experience – Terms and Conditions

Tell me what steps you take to determine what terms and conditions of service apply to an employee (meaning pay rate, shift penalties, overtime penalties, allowances, amount of leave etc)?

What lets you know that the terms and conditions are correct?

Are you aware of the terms “Modern Award” and “National Employment Standards”?

Do you have an enterprise agreement?

7.3.2 SME Experience – Record Keeping

What level of employee records do you keep?

Payslips?

Leave Accruals?

7.3.3 SME Experience – Unfair Dismissal

Was there a time that you had to dismiss an employee for poor performance?

Was there a time that you had to dismiss an employee for misconduct?

Was there a time that you had to dismiss (make redundant) an employee due to a downturn with the business?

What steps would you take if you needed to dismiss an employee?

If an employee is on extended sick leave, what would you consider as the options available to you?

7.3.4 SME Experience – Discrimination

What is your understanding of your obligations not to discriminate either with your employees or when you recruit into your business?

Thinking about discrimination in the workplace, can you give me an example of some of the questions you cannot ask either an employee or a candidate?

7.3.4 SME Experience – Occupational Safety and Health

What steps do you take to satisfy yourself that your workplace is a safe place for your employees?

Have you had a visit (or experience with) WorkSafe in WA?

Are you aware of their role – and their rights?

Have you experienced an employee lodging a workers compensation claim?

Can you tell me what you know about workers compensation?

7.3.6 SME Compliance

7.3.5.1 Actions

What steps do you take to meet your employment-related legislative obligations?

Which of the following are you aware of – or have used?

Prompts

- CCIWA?
- HR Nicholls Society?
- SBDC?
- Government Website/Fact Sheets?
- Government Hotline?
- Accountant?
- Family/Friends?
- Board Members?

7.3.6.2 Costs

What are the costs of ensuring you comply with all employment related obligations?

Prompts

- Internal financial cost as a result of hiring expert staff?
- External financial cost (membership of CCIWA, employment lawyers, training courses etc)?
- Opportunity cost of time that could have been spent on generating product sales or services?
- Opportunity cost of time spent with family and friends?

7.3.7 Inclination to Comply

How do you feel about the need to comply with their employment law obligations?

7.3.8 Concerns with Compliance

In your experience, what areas of compliance cause you the greatest concern?

7.3.9 Awareness of Pecuniary Penalties

Are you aware of the role of the Fair Work Ombudsman?

Are you aware of the penalties that may apply if you do not meet your employment law compliance?

Prompts

- Can you give me some examples?
- Are you aware of any changes in penalties that have occurred?
- Are you aware of any changes in the level of monitoring of compliance that is occurring?

- Would an increase in the probability of being fined for non-compliance change your approach/the steps you take to compliance with employment-related legislative obligations?

7.3.10 Additional/Alternate Support Services

What additional support services would assist your compliance with employment-related legislative obligations?

7.3.11 Anything Else

Is there anything else you would like to add?

APPENDIX F: INVITATION TO PARTICIPATE – OWNER/MANAGERS

From: eileen.aitken@postgrad.curtin.edu.au<eileen.aitken@postgrad.curtin.edu.au>
Sent: Friday, 12 October 2012 2:45 PM
To:
Subject: Meeting Request - PhD Research: SME Compliance with Employment Law in WA

Dear Business Owner/Manager

I am a PhD student at the Curtin Graduate School of Business and my area of study is employment law compliance in small and medium enterprises (SME's) in WA. My research involves interviewing Owner/Managers of small and medium businesses to discuss their experiences and challenges in complying with legislation such as: the *Fair Work Act 2009* (Cth); *Occupational Safety and Health Act 1984* (WA); *Workers Compensation Act 1979* (WA); and, both State and Federal Discrimination legislation. Specifically, I am meeting with SME's in the Retail, Hospitality and Resource Sectors.

I am writing to invite you to participate in this research by way of an interview to discuss your employment compliance experiences to date. Your assistance and participation will be invaluable in informing stakeholders (Government, Employer Bodies and Unions) of your compliance challenges and experiences.

To confirm your agreement to participate, please simply respond to this email and I will coordinate a meeting date/time with you. I anticipate that 60 to 90 minutes would be required. Please be assured that the ethics approval underpinning this PhD research provides for anonymity of all respondents.

(Note: If you have received this email and are not the Owner/Manager of this business it would be appreciate if you could forward this email to the business Owner/Manager. Please do not disregard before giving the business Owner/Manager the opportunity to consider. Thank you).

Kind Regards

Eileen Aitken-Fox

PhD Candidate

Graduate School of Business

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APPENDIX G: INVITATION TO PARTICIPATE – STAKEHOLDERS

From: eileen.aitken@postgrad.curtin.edu.au<eileen.aitken@postgrad.curtin.edu.au>

Sent: Friday, 12 October 2012 2:45 PM

To:

Subject: Meeting Request - PhD Research: SME Compliance with Employment Law in WA

Dear [Name]

I am a PhD student at the Curtin Graduate School of Business and my area of study is employment law compliance in small and medium enterprises (SME's) in WA. My research will involve meeting with owner/managers of SME's with a view to discussing their experiences, knowledge, abilities and use of available support services.

Before meeting with a range of SME's in WA I would appreciate the opportunity to meet with you to discuss your experiences in dealing with SME's on matters of employment law compliance (*Fair Work Act, WA Industrial Relations Act, Health and Safety, Workers Compensation, Discrimination* etc). The intent of the meeting would be to confirm (or otherwise) the typical areas of concern or dispute and to discuss access to SME's that may become involved in the research.

As the Government body charged with [Insert Focus], the contribution and involvement of the [Agency Name] is a critical element of the research.

It would be appreciated if you could advise of your availability to participate on either of the following dates:

- Friday 26th October 2012
- Friday 9th November 2012
- Friday 23rd November 2012
- Friday 7th December 2012

Please feel free to respond direct to this email with a preferred date, time and location. I anticipate that 60 to 90 minutes would be required.

Your assistance will be invaluable to this research that has the objective of identifying opportunities for stakeholders (Government, Industry and Unions) to expand support for SMEs in order to promote success in their understanding of and compliance with employment-related legislation; a win win for employees and employers.

Kind Regards

Eileen Aitken-Fox

PhD Candidate

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APPENDIX H: BANKING, FINANCE AND INSURANCE AWARD 2010

Banking, Finance and Insurance Award 2010

This Fair Work Commission consolidated modern award incorporates all amendments up to and including 29 July 2016 ([PR582967](#)).

Clause(s) affected by the most recent variations: 24—Annual leave

Schedule G—Agreement to Take Annual Leave in Advance Schedule H—Agreement to Cash Out Annual Leave

Current review matter(s): [AM2014/47](#); [AM2014/190](#); [AM2014/196](#); [AM2014/197](#); [AM2014/217](#); [AM2014/300](#); [AM2014/301](#); [AM2014/306](#); [AM2015/1](#); [AM2015/2](#)

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[Varied by [PR988363](#), [PR507824](#), [PR532630](#), [PR544519](#), [PR546288](#), [PR557581](#), [PR573679](#), [PR582967](#)]

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Part 1—Application and Operation

1. Title

This award is the *Banking, Finance and Insurance Award 2010*.

2. Commencement and transitional

[Varied by [PR988363](#), [PR542139](#)]

2.1 This award commences on 1 January 2010.

2.2 The monetary obligations imposed on employers by this award may be absorbed into overaward payments. Nothing in this award requires an employer to maintain or increase any overaward payment.

2.3 This award contains transitional arrangements which specify when particular parts of the award come into effect. Some of the transitional arrangements are in clauses in the main part of the award. There are also transitional arrangements in Schedule A. The arrangements in Schedule A deal with:

- minimum wages and piecework rates
- casual or part-time loadings
- Saturday, Sunday, public holiday, evening or other penalties
- shift allowances/penalties.

[2.4 varied by [PR542139](#) ppc 04Dec13]

2.4 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.

[2.5 varied by [PR542139](#) ppc 04Dec13]

2.5 The Fair Work Commission may review the transitional arrangements in this award and make a determination varying the award.

[2.6 varied by [PR542139](#) ppc 04Dec13]

2.6 The Fair Work Commission may review the transitional arrangements:

- (a) on its own initiative; or
- (b) on application by an employer, employee, organisation or outworker entity covered by the modern award; or
- (c) on application by an organisation that is entitled to represent the industrial interests of one or more employers or employees that are covered by the modern award; or

- (d) in relation to outworker arrangements, on application by an organisation that is entitled to represent the industrial interests of one or more outworkers to whom the arrangements relate.

3. Definitions and interpretation

[Varied by [PR994548](#), [PR997772](#), [PR503623](#), [PR545986](#)]

3.1 In this award, unless the contrary intention appears:

[Definition of **Act** substituted by [PR994548](#) from 01Jan10]

Act means the *Fair Work Act 2009* (Cth)

[Definition of **agreement-based transitional instrument** inserted by [PR994548](#) from 01Jan10]

agreement-based transitional instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

[Definition of **award-based transitional instrument** inserted by [PR994548](#) from 01Jan10]

award-based transitional instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

[Definition of **Commission** deleted by [PR994548](#) from 01Jan10] [Definition of

default fund employee inserted by [PR545986](#) ppc 01Jan14]

default fund employee means an employee who has no chosen fund within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cth)

[Definition of **defined benefit member** inserted by [PR545986](#) ppc 01Jan14]

defined benefit member has the meaning given by the *Superannuation Guarantee (Administration) Act 1992* (Cth)

[Definition of **Division 2B State award** inserted by [PR503623](#) ppc 01Jan11]

Division 2B State award has the meaning in Schedule 3A of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

[Definition of **Division 2B State employment agreement** inserted by [PR503623](#) ppc 01Jan11]

Division 2B State employment agreement has the meaning in Schedule 3A of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

[Definition of **employee** substituted by [PR994548](#), [PR997772](#) from 01Jan10]

employee means national system employee within the meaning of the Act

[Definition of **employer** substituted by [PR994548](#), [PR997772](#) from 01Jan10]

employer means national system employer within the meaning of the Act

[Definition of **enterprise award** deleted by [PR994548](#) from 01Jan10]

[Definition of **enterprise award-based instrument** inserted by [PR994548](#) from 01Jan10]

enterprise award-based instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

[Definition of **enterprise NAPSA** deleted by [PR994548](#) from 01Jan10]

[Definition of **exempt public sector superannuation scheme** inserted by [PR545986](#) ppc 01Jan14]

exempt public sector superannuation scheme has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth)

[Definition of **MySuper product** inserted by [PR545986](#) ppc 01Jan14]

MySuper product has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth)

[Definition of **NAPSA** deleted by [PR994548](#) from 01Jan10]

[Definition of **NES** substituted by [PR994548](#) from 01Jan10]

NES means the National Employment Standards as contained in [sections 59 to 131](#) of the *Fair Work Act 2009* (Cth)

[Definition of **on-hire** inserted by [PR994548](#) from 01Jan10]

on-hire means the on-hire of an employee by their employer to a client, where such employee works under the general guidance and instruction of the client or a representative of the client

standard rate means the minimum weekly wage for a Level 2 employee in clause 13.1

[Definition of **transitional minimum wage instrument** inserted by [PR994548](#) from 01Jan10]

transitional minimum wage instrument has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

3.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.

4. Coverage

[Varied by [PR994548](#)]

4.1 This industry award covers employers throughout Australia who are engaged in the banking, finance and insurance industry in respect of work by their employees in a classification in this award and those employees to the exclusion of any other modern award.

4.2 Definition of banking, finance and insurance industry

Banking, finance and insurance industry means the industries of banking, lending, loaning, providing credit, investment, finance, superannuation, all forms of insurance, credit unions, building societies, financial intermediaries, trustee creditors and agencies, money market

dealers, credit or charge card institutions, wool broking, agribusiness and services to the above industries such as broking, trading, debt recovery, financial consulting, valuation, money changing, data processing, transaction accounts, telephone enquiries and transaction processing.

4.3 Exclusions

[4.3 substituted by [PR994548](#) from 01Jan10]

This award does not cover:

- (a) an employee excluded from award coverage by the Act;
- (b) employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees;
- (c) employees who are covered by a State reference public sector modern award, or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees; or
- (d) contract call centres covered by the *Contract Call Centres Award 2010*.

[New 4.4 inserted by [PR994548](#) from 01Jan10]

4.4 This award covers any employer which supplies labour on an on-hire basis in the industries set out in clause 4.2 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in those industries. This subclause operates subject to the exclusions from coverage in this award.

[4.5 inserted by [PR994548](#) from 01Jan10]

4.5 This award covers employers which provide group training services for trainees engaged in the industries and/or parts of industry set out at clause 4.2 and those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. This subclause operates subject to the exclusions from coverage in this award

[4.4 renumbered as 4.6 by [PR994548](#) from 01Jan10]

4.6 Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.

5. Access to the award and the National Employment Standards

The employer must ensure that copies of this award and the NES are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

6. The National Employment Standards and this award

The [NES](#) and this award contain the minimum conditions of employment for employees covered by this award.

7. Award flexibility

[Varied by [PR542139](#)]

7.1 Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:

- (a) arrangements for when work is performed;
- (b) overtime rates;
- (c) penalty rates;
- (d) allowances; and
- (e) leave loading.

[7.2 varied by [PR542139](#) ppc 04Dec13]

7.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer.

7.3 The agreement between the employer and the individual employee must:

- (a) be confined to a variation in the application of one or more of the terms listed in clause 7.1; and

[7.3(b) varied by [PR542139](#) ppc 04Dec13]

- (b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.

7.4 The agreement between the employer and the individual employee must also:

- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;

- (b) state each term of this award that the employer and the individual employee have agreed to vary;
- (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
- (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
- (e) state the date the agreement commences to operate.

7.5 The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.

7.6 Except as provided in clause 7.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.

7.7 An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.

7.8 The agreement may be terminated:

[7.8(a) varied by [PR542139](#) ppc 04Dec13]

- (a) by the employer or the individual employee giving 13 weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
- (b) at any time, by written agreement between the employer and the individual employee.

[Note inserted by [PR542139](#) ppc 04Dec13]

Note: If any of the requirements of s.144(4), which are reflected in the requirements of this clause, are not met then the agreement may be terminated by either the employee or the employer, giving written notice of not more than 28 days (see s.145 of the *Fair Work Act 2009* (Cth)).

[New 7.9 inserted by [PR542139](#) ppc 04Dec13]

7.9 The notice provisions in clause 7.8(a) only apply to an agreement entered into from the first full pay period commencing on or after 4 December 2013. An agreement entered into before that date may be terminated in accordance with clause 7.8(a), subject to four weeks' notice of termination.

[7.9 renumbered as 7.10 by [PR542139](#) ppc 04Dec13]

7.10 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

Part 2—Consultation and Dispute Resolution

8. Consultation

[8—Consultation regarding major workplace change renamed and substituted by [PR546288](#) ppc 01Jan14]

8.1 Consultation regarding major workplace change

(a) Employer to notify

- (i) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.
- (ii) **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer’s workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

(b) Employer to discuss change

- (i) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 8.1(a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- (ii) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 8.1(a).
- (iii) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer’s interests.

8.2 Consultation about changes to rosters or hours of work

- (a) Where an employer proposes to change an employee’s regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.

- (b) The employer must:
- (i) provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);
 - (ii) invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
 - (iii) give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.
- (c) The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.
- (d) These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.

9. Dispute resolution

[Varied by [PR994548](#), [PR542139](#)]

9.1 In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.

[9.2 varied by [PR994548](#), [PR542139](#) ppc 04Dec13]

9.2 If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 9.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.

[9.3 varied by [PR994548](#), [PR542139](#) ppc 04Dec13]

9.3 The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.

[9.4 varied by [PR994548](#), [PR542139](#) ppc 04Dec13]

9.4 Where the matter in dispute remains unresolved the Fair Work Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.

9.5 An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.

9.6 While the dispute resolution procedure is being conducted, work must continue in

accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

Part 3—Types of Employment and Termination of Employment

10. Types of employment

An employee may be engaged on a full-time, part-time or casual basis.

10.1 Full-time employment

A full-time employee is an employee who is engaged to work an average of 38 ordinary hours per week.

10.2 Part-time employment

- (a) A part-time employee is an employee who:
 - (i) is engaged to work an average of fewer than 38 ordinary hours per week; and
 - (ii) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.
- (b) For each ordinary hour worked, a part-time employee will be paid no less than 1/38th of the minimum weekly rate of pay for the relevant classification in clause 13—Classifications and minimum wage rates.
- (c) An employer must inform a part-time employee of the ordinary hours of work and starting and finishing times. All time worked at the direction of the employer in excess of these hours will be paid at the appropriate overtime rate.

10.3 Casual employment

- (a) A casual employee is one engaged and paid as such. A casual employee's ordinary hours of work are the lesser of an average of 38 hours per week or the hours required to be worked by the employer.
- (b) For each hour worked, a casual employee will be paid no less than 1/38th of the minimum weekly rate of pay for their classification in clause 13—Classifications and minimum wage rates, plus a casual loading of 25%.
- (c) The casual loading is paid instead of annual leave, personal/carer's leave, notice of termination, redundancy benefits and the other attributes of full-time or part-time employment.

11. Termination of employment

- 11.1** Notice of termination is provided for in the NES.

11.2 Notice of termination by an employee

The notice of termination required to be given by an employee is the same as that required of an employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice the employer may withhold from any monies due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause less any period of notice actually given by the employee.

11.3 Job search entitlement

Where an employer has given notice of termination to an employee, an employee must be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.

12. Redundancy

[Varied by [PR994548](#), [PR503623](#), [PR561478](#)]

12.1 Redundancy pay is provided for in the NES.

12.2 Transfer to lower paid duties

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may, at the employer's option, make payment instead of an amount equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.

12.3 Employee leaving during notice period

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

12.4 Job search entitlement

- (a)** An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b)** If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration will be sufficient.
- (c)** This entitlement applies instead of clause 11.3.

12.5 Transitional provisions – NAPSA employees

[12.5 substituted by [PR994548](#); renamed by [PR503623](#); deleted by [PR561478](#) ppc 05Mar15]

12.6 Transitional provisions – Division 2B State employees

[12.6 inserted by [PR503623](#); deleted by [PR561478](#) ppc 05Mar15]

Part 4—Minimum Wages and Related Matters

13. Classifications and minimum wage rates

[Varied by [PR988363](#), [PR990706](#), [PR997963](#), [PR509050](#), [PR522881](#), [PR536684](#), [PR551607](#), [PR566687](#), [PR579780](#)]

13.1 Adult employees

[13.1(a) varied by [PR997963](#), [PR509050](#), [PR522881](#), [PR536684](#), [PR551607](#); substituted by [PR566687](#) 01Jul15;

varied by [PR579780](#) ppc 01Jul16]

- (a) A full-time adult employee must be paid a minimum rate for their classification as set out in the table below:

Level	Minimum annual salary \$	Minimum weekly rate \$
Level 1	37,190	715.20
Level 2	40,732	783.30
Level 3	43,020	827.30
Level 4	45,172	868.70
Level 5	47,008	904.00
Level 6	52,650	1012.50

- (b) The classification structure and descriptors for the above classifications are contained in Schedule B—Classification Structure.

13.2 Junior employees

Where the law permits junior employees to perform work in the banking, finance and insurance industry, the junior employee will be entitled to the percentage of the applicable adult weekly wage (in the case of part-time or casual employees the hourly rate) for their classification as set out in the table below:

Age	Percentage of adult rate %
16 years or less	50
At 17 years	60
At 18 years	70
At 19 years	80

14. Annualised salaries

[14 inserted by [PR990706](#) from 01Jan10; varied by [PR994548](#)]

14.1 Annual salary instead of award provisions

- (a) An employer may pay an employee an annual salary in satisfaction of any or all of the following provisions of the award:

[14.1(a) (i) varied by [PR994548](#) from 01Jan10]

- (i) clause 13—Classifications and minimum wage rates;
 - (ii) clause 18—Allowances;
 - (iii) clause 23—Overtime and penalty rates; and
 - (iv) clause 24.3—Annual leave loading.
- (b) Where an annual salary is paid the employer must advise the employee in writing of the annual salary that is payable and which of the provisions of this award will be satisfied by payment of the annual salary.

14.2 Annual salary not to disadvantage employees

- (a) The annual salary must be no less than the amount the employee would have received under this award for the work performed over the year for which the salary is paid (or if the employment ceases earlier over such lesser period as has been worked).
- (b) The annual salary of the employee must be reviewed by the employer at least annually to ensure that the compensation is appropriate having regard to the award provisions which are satisfied by the payment of the annual salary.

14.3 Base rate of pay for employees on annual salary arrangements

For the purposes of the NES, the base rate of pay of an employee receiving an annual salary under this clause comprises the portion of the annual salary equivalent to the relevant rate of pay in clause 13—Classifications and minimum wage rates and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.

15. School-based apprentices

[Varied by [PR988363](#); 14 renumbered as 15 by [PR990706](#) from 01Jan10]

See Schedule C

16. National Training Wage

[New 16 inserted by [PR507824](#) ppc 24Mar11]

See Schedule E

17. Supported wage system

[15 renumbered as 16 by [PR990706](#), 16 renumbered as 17 by [PR507824](#) ppc 24Mar11]

See Schedule D

18. Allowances

To view the current monetary amounts of work-related allowances refer to the [Allowances Sheet](#).

[16 renumbered as 17 by [PR990706](#); varied by [PR994548](#), [PR998164](#), [PR509172](#), [PR523002](#), [PR536805](#), [PR551728](#), [PR561478](#); 17 renumbered as 18 by [PR507824](#) ppc 24Mar11; varied by [PR561478](#), [PR566829](#), [PR579524](#)]

18.1 Allowances are all-purpose allowances only if expressly stated in this clause. Where an employee is paid by the hour, the allowance will be 1/38th of the weekly allowance.

18.2 Allowances for responsibilities or skills that are not taken into account in rates of pay

(a) First aid allowance

Where an employer is required by legislation to appoint an accredited first aid officer(s) to perform first aid duties, such appointed employee(s) must be paid 1.84% of the [standard rate](#) per week for full-time employees and a pro rata amount for part-time employees.

(b) Stand-by and call-back allowances

(i) An employee required to be available by roster for stand-by to perform work outside their ordinary working hours must be paid a stand-by payment at the following rate:

Days	Percentage per day of the standard rate
	%
Monday to Friday inclusive	2.12
Saturdays, Sundays and public holidays	4.33

- (ii) An employee who formally is rostered to stand by and is recalled to work must be paid in accordance with the provisions of clause 23— Overtime and penalty rates. For the purposes of assessing the duration of the call-out, time spent on the journey from home to work and from work to home by the most direct route must be included. Provided that the minimum payment for work performed under this clause must be two hours.
- (iii) Where an employee provides their own car, and uses it in connection with the employer’s business in the above circumstances, they must be paid an allowance as provided by clause 18.3(b) (iv) when so using the car. Payment will be calculated on a home to home basis.
- (iv) Where the employee uses public transport, including the use of taxis with the approval of the employer, the fare will be reimbursed.

[17.2(b) (v) varied by [PR994548](#) from 01Jan10]

- (v) An employee while rostered on stand-by duty must be reimbursed for all business calls.
- (vi) An employee who is not formally rostered to stand by but is recalled to work must be paid in accordance with the provision of clause 23— Overtime and penalty rates and must be entitled to a minimum payment of two hours at the appropriate overtime rate. The duration of the call-out will be assessed as in 18.2(b) (ii) of this clause.

(c) Higher duties allowance

Where an employee is required by the employer to relieve in a job which is at a level higher than the job in which the employee usually works, for a period of more than four consecutive working days, the employee must be paid at least the minimum salary prescribed in this award for the higher job level.

18.3 Allowances for disabilities associated with the performance of particular tasks or work in particular conditions or locations

[18.3 deleted by [PR561478](#) ppc 05Mar15]

18.3 Reimbursement and expense related allowances

[18.4 renumbered as 18.3 by [PR561478](#) ppc 05Mar15]

(a) Meal allowance

[17.4(a) varied by [PR998164](#); 18.4(a) varied by [PR509172](#), [PR523002](#), [PR536805](#), [PR551728](#); 18.3(a) varied by [PR566829](#), [PR579524](#) ppc 01Jul16]

An employee must be paid a meal allowance of \$15.98, or be provided with a suitable meal if required to work one and a half hours overtime, and the period of overtime extends beyond 6.00 pm. A further allowance of \$13.14 must be paid if the overtime exceeds five and a half hours.

(b) Travelling expenses

- (i) When an employee in the course of their duty, is required to go to any place away from their usual place of employment they must be paid all reasonable expenses actually incurred.
- (ii) When employees, in the course of their duty, are required to travel to any place away from their usual place of employment outside ordinary working hours, they must be paid all reasonable expenses actually incurred plus payment at half the ordinary rate for the time the travelling time exceeds normal travel time from home to work. Provided that no extra payment is payable when an employee is being paid overtime for the time spent travelling.

(iii) Motor vehicle allowance

[18.4(b) (iii) varied by [PR523002](#), [PR536805](#), [PR551728](#) ppc 01Jul14]

Any employee required to provide a motor vehicle as a condition of their employment must be paid an allowance of:

	Per week
	\$
For a vehicle 1500 cc and under	101.86
For a vehicle over 1500 cc	125.65

[18.4(b) (iv) varied by [PR523002](#), [PR536805](#), [PR551728](#) ppc 01Jul14]

- (iv) Where an employer approves the use by any other employee of a private motor vehicle on a casual or incidental basis, they must be paid an allowance of \$0.78 per kilometre travelled.
- (v) Where an employer provides a vehicle they must pay the whole of the cost of the upkeep, registration, insurance, maintenance and running expenses but may deduct from an employee's salary a contribution towards running costs with respect to private use.

18.4 Adjustment of expense related allowances

[17.5 substituted by [PR994548](#) from 01Jan10; 18.5 renumbered as 18.4 by [PR561478](#) ppc 05Mar15]

- (a) At the time of any adjustment to the [standard rate](#), each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.
- (b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

Allowance	Applicable Consumer Price Index figure
Meal allowance	Take away and fast foods sub-group
Motor vehicle allowance	Private motoring sub-group

19. Accident pay

[17 renumbered as 18 by [PR990706](#); varied by [PR994548](#), [PR503623](#); 18 renumbered as 19 by [PR507824](#); deleted by [PR561478](#) ppc 05Mar15]

20. Payment of wages

[Varied by [PR989301](#); 18 renumbered as 19 by [PR990706](#), 19 renumbered as 20 by [PR507824](#) ppc 24Mar11]

20.1 Employees must be paid their salaries weekly or fortnightly as determined by the employer or monthly if mutually agreed. Where payment is made monthly it must be on the basis of two weeks in advance and two weeks in arrears.

20.2 Wages must be paid either by cash, cheque or electronic funds transfer, the method of which will be determined by the employer.

21. Superannuation

[19 renumbered as 20 by [PR990706](#); varied by [PR994548](#), [PR500140](#), [PR514728](#), [PR545986](#); 20 renumbered as 21 by [PR507824](#) ppc 24Mar11]

21.1 Superannuation legislation

(a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, the superannuation fund nominated in the award covering the employee applies.

(b) The rights and obligations in these clauses supplement those in superannuation legislation.

21.2 Employer contributions

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

21.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 21.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 21.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 21.3(a) or (b) was made.

21.4 Superannuation fund

[20.4 varied by [PR994548](#); substituted by [PR500140](#) from 11Aug10; 21.4 varied by [PR514728](#) ppc 12Sep11]

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 21.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 21.2 and pay the amount authorised under clauses 21.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) CareSuper;
- (b) AustralianSuper;
- (c) Sunsuper;
- (d) HESTA;
- (e) Statewide Superannuation;
- (f) Tasplan;

[21.4(g) deleted by [PR545986](#) ppc 01Jan14]

[21.4(h) deleted by [PR545986](#) ppc 01Jan14]

[21.4(i) renumbered as 21.4(g) by [PR545986](#) ppc 01Jan14]

- (g) NGS Super;

[21.4(j) deleted by [PR545986](#) ppc 01Jan14]

[21.4(k) renumbered as 21.4(h) by [PR545986](#) ppc 01Jan14]

- (h) MTAA Superannuation Fund;

[21.4(l) renumbered as 21.4(i) and varied by [PR545986](#) ppc 01Jan14]

- (i) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September

2008,
provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector scheme; or

[New 21.4(j) inserted by [PR545986](#) ppc 01Jan14]

- (j) a superannuation fund or scheme which the employee is a defined benefit member of.

21.5 Absence from work

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 21.2 and pay the amount authorised under clauses 21.3(a) or (b):

- (a) **Paid leave**—while the employee is on any paid leave.
- (b) **Work related injury or illness**—for the period of absence from work (subject to a maximum of 52 weeks) of the employee due to work-related injury or work-related illness provided that:
 - (i) the employee is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with the statutory requirements; and
 - (ii) the employee remains employed by the employer.

Part 5—Hours of Work and Related Matters

22. Ordinary hours of work

[20 renumbered as 21 by [PR990706](#); varied by [PR992144](#), [PR994548](#), [PR501433](#), [PR501873](#), [PR543670](#); 21 renumbered as 22 by [PR507824](#) ppc 24Mar11]

22.1 Span of hours

[21.1 varied by [PR501433](#) ppc 07Sep10; operative date corrected by [PR501873](#) ppc 07 Sep10]

The span of ordinary hours will be 7.00 am to 7.00 pm Monday to Friday, and 8.00 am to 12 noon Saturday.

Provided that on not more than one night per week, which must be specified in advance by the employer, the span of ordinary hours may be worked up to 9.00 pm.

22.2 Ordinary hours of work exclusive of meal breaks will be an average of 38 per week to be worked on one of the following bases:

- (a) 38 hours within a work cycle of one week;
- (b) 76 hours within a work cycle of two weeks;
- (c) 114 hours within a work cycle of three weeks; or
- (d) 152 hours within a work cycle of four weeks.

Week will mean any five consecutive days to be worked Monday to Friday, or five and a half consecutive days, Monday to Saturday.

[22.3 varied by [PR543670](#) ppc 21Oct13]

22.3 When an employee is asked to work beyond their normal scheduled finishing time and where the usual means of transport is either unavailable, impracticable or unsafe, the employer will arrange suitable transport for the employee between the place of work and the employee's place of residence provided that where an employee chooses to use their own motor vehicle with the agreement of the employer they must be reimbursed as per clause 18.3(b) of this award.

22.4 Meal and rest breaks

Meal breaks will be no less than 30 minutes, as determined by the employer provided that an employee will not be called upon to work in excess of five hours without a meal break except where the daily hours to be worked are six hours or less and the employee applies to work for that extended period without such breaks and the employer agrees. Provided further that in emergency circumstances a meal break may be deferred by mutual agreement. All employees will be allowed a rest break or breaks during a working day at a time or times and in a manner agreed between the employer and employee or, if no agreement is reached, as determined by the employer.

22.5 Commencing and ceasing times within the span of hours may be staggered by the employer to improve operational efficiency.

22.6 Make-up time

Notwithstanding provisions elsewhere in this award, an employer and the majority of employees in a section or sections of an employer's business may agree to establish a system of make-up time.

- (a) An employee may elect, with the consent of an employer, to work make-up time under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in this award.
- (b) An employee on shiftwork may elect, with the consent of their employer, to work make-up time under which the employee takes time off ordinary hours and works those hours at a later time, at the shiftwork rate which would have been applicable to the hours taken off.
- (c) Once a decision has been taken to introduce an enterprise system of make-up time, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to relevant regulations.
- (d) An employer will record make-up time arrangements in the time and wages book each time this provision is used.

22.7 Rostered days off

Notwithstanding provisions elsewhere in this award, an employer and the majority of employees at an enterprise may agree to establish a system of rostered days off to provide that:

- (a) an employee may elect, with the consent of an employer to take a rostered day off at any time;
- (b) an employee may elect with the consent of an employer, to take rostered days off in part day amounts;
- (c) an employee may elect, with the consent of an employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by an employer, or subject to reasonable notice by the employee or an employer;
- (d) once a decision has been taken to introduce an enterprise system of rostered days off flexibility, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to relevant regulations; and
- (e) an employer will record rostered days off arrangements in the time and wages book at each time this provision is used.

22.8 Shiftwork

Shiftwork may be worked on the following basis.

- (a) The following definitions will apply in relation to this clause:
 - (i) **shiftworker** means an employee whose ordinary hours of work are worked in accordance with the shifts defined in this clause;
 - (ii) **afternoon shift** means any shift finishing between 6.00 pm and midnight;
 - (iii) **early morning shift** means any shift commencing between 4.00 am and 7.00 am; and
 - (iv) **night shift** means any shift finishing between midnight and 8.00 am.

Provided that employees who, in accordance with this clause, work ordinary hours up to 9.00 pm on any one night between Monday to Friday inclusive, will not be considered shiftworkers for the purposes of this award.

- (b) The following loadings will apply in relation to the working of shiftwork on Monday to Friday and on Saturday between 8.00 am and 12.00 pm:
 - afternoon shift at the rate of 20%;
 - early morning shift at the rate of 12.5%;
 - night shift at the rate of 25%; and
 - employees who permanently work afternoon or night shift or a combination thereof will be paid an additional 5% loading.

[21.8(c) varied by [PR994548](#) from 01Jan10]

- (c) Casual and part-time shiftworkers will receive the loading prescribed in this clause.

Provided that casual and part-time employees who are employed between the hours of 7.00 am and 7.00 pm (and up to 9.00 pm on any one night between Monday to Friday inclusive) in accordance with this clause, will not be considered shiftworkers for the purposes of this award.

- (d) Meal breaks will be of 20 minutes' duration and paid as if worked. An employee will not be called upon to work in excess of five hours without a meal break except where the daily hours to be worked are six hours or less and the employee applies to work for that extended period without such break and the employer agrees. Provided further that in emergency circumstances a meal break may be deferred by mutual agreement.
- (e) An employer may implement such measures as deemed necessary to enable continuity of operations during shift changeovers.
- (f) No employee under 18 years of age will be employed on shiftwork except with the written consent of the employee's parent/guardian.
- (g) Arrangements for transport for employees finishing or commencing a shift between the hours of 8.00 pm to 6.00 am are to be satisfactorily established by the employer concerned, taking into account the requirements of the particular location, and having regard to any special circumstances.
- (h) Notwithstanding anything contained elsewhere in this award, in any area where, by reason of the legislation of a State summer time is prescribed as being in advance of the standard time of that State the length of any shift:
 - (i) commencing before the time prescribed by the relevant legislation for the commencement of a summer time period; and
 - (ii) commencing on or before the time prescribed by such legislation for the termination of a summer time period will be deemed to be the number of hours represented by the difference between the time recorded by the clock at the beginning of the shift and the time so recorded at the end thereof, the time of the clock in each case to be set to the time fixed pursuant to the relevant State legislation.

In this clause the expression **standard time** and **summer time** will bear the same meaning as are prescribed by the relevant State legislation.

23. Overtime and penalty rates

[21 renumbered as 22 by [PR990706](#); varied by [PR992144](#); 22 renumbered as 23 by [PR507824](#) ppc 24Mar11]

[22.1 varied by [PR994548](#) from 01Jan10]

- 23.1 All time worked at the direction of the employer outside ordinary hours of work prescribed by this award, will be paid for at the rate of:

- (a) time and a half for the first three hours and double time thereafter
- (b) double time for all work on Saturday outside an employee's weekly hours; and
- (c) double time for all work performed on Sunday.

In computing overtime each day's work will stand alone.

- 23.2** An employee working overtime will be allowed a 20 minute paid rest break once the employee has worked five hours since the last rest break.
- 23.3** Meal breaks may be extended by mutual agreement to a period not exceeding one hour provided that any time taken in excess of the paid break determined by this clause will be unpaid.
- 23.4** An employee may elect, with the consent of an employer, to take time off instead of payment for overtime at a time or times agreed with an employer.
- 23.5** Overtime taken as time off during ordinary time hours will be taken at the ordinary time rate, that is an hour for each hour worked.
- 23.6** An employer will, if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in this clause, for any overtime worked under this clause where such time has not been taken within four weeks of accrual.
- 23.7** An employer may require any employee to work reasonable overtime at overtime rates and such employee will work overtime in accordance with such requirement.
- 23.8** When overtime work is necessary, it will wherever reasonably practicable, be so arranged that employees have at least 10 consecutive hours off duty between the work of successive days.

An employee (other than a casual employee) who works so much overtime between the termination of their ordinary work on one day and the commencement of their ordinary work on the next day that they have not had at least 10 consecutive hours off duty between those times will, subject to this clause, be released after completion of such overtime until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

If on the instruction of the employer such an employee resumes or continues work without having had such 10 consecutive hours off duty they must be paid at double rates until they are released from duty for such period. They will then be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

The provisions of this clause will apply in the case of shiftworkers as if eight hours were substituted for 10 hours when overtime is worked:

- (a) for the purpose of changing shift rosters;
- (b) where a shiftworker does not report for duty and a day worker or shiftworker is required to replace such shiftworker; or
- (c) where a shift is worked by arrangement between the employees themselves.

Overtime worked in the circumstances specified in clause 18.2(b) will not be regarded as overtime for the purposes of this clause when the actual time worked is less than two hours on such recall or on each of such recalls.

Part 6—Leave and Public Holidays

24. Annual leave

[22 renumbered as 23 by [PR990706](#), 23 renumbered as 24 by [PR507824](#) ppc

24Mar11] [Varied by [PR582967](#)]

24.1 Annual leave is provided for in the NES.

24.2 Definition of shiftworker

For the purpose of the additional week of annual leave provided for in the NES, a **shiftworker** is a seven day shiftworker who is regularly rostered to work on Sundays and public holidays in a business in which shifts are continuously rostered 24 hours a day for seven days a week.

24.3 Annual leave loading

(a) During a period of annual leave an employee will receive a loading calculated on the rate of wage prescribed in clause 13—Classifications and minimum wage rates. Annual leave loading payment is payable on leave accrued.

(b) The loading is as follows:

(i) **Day work**

Employees who would have worked on day work only had they not been on leave—17.5% or the relevant weekend penalty rates, whichever is the greater but not both.

(ii) **Shiftwork**

Employees who would have worked on shiftwork had they not been on leave—17.5% or the shift loadings and relevant weekend penalty rates, whichever is the greater but not both.

24.4 Annual leave in advance

[24.4 renamed and substituted by [PR582967](#) ppc 29Jul16]

(a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.

(b) An agreement must:

(i) state the amount of leave to be taken in advance and the date on which leave is to commence; and

- (ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

Note: An example of the type of agreement required by clause 24.4 is set out at Schedule G. There is no requirement to use the form of agreement set out at Schedule G.

- (c) The employer must keep a copy of any agreement under clause 24.4 as an employee record.
- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 24.4, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

24.5 Close-down

[24.5 renamed and substituted by [PR582967](#) ppc 29Jul16]

An employer may require an employee to take annual leave as part of a close-down of its operations, by giving at least four weeks' notice.

24.6 Excessive leave accruals: general provision

[24.6 inserted by [PR582967](#) ppc 29Jul16]

Note: Clauses 24.6 to 24.8 contain provisions, additional to the National Employment Standards, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Fair Work Act.

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 24.2).
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 24.7 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 24.8 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

24.7 Excessive leave accruals: direction by employer that leave be taken

[24.7 inserted by [PR582967](#) ppc 29Jul16]

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 24.6(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.

- (b) However, a direction by the employer under paragraph (a):
 - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 24.6, 24.7 or 24.8 or otherwise agreed by the employer and employee) are taken into account; and
 - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
 - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
 - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.
- (d) An employee to whom a direction has been given under paragraph (a) may request to take a period of paid annual leave as if the direction had not been given.

Note 1: Paid annual leave arising from a request mentioned in paragraph (d) may result in the direction ceasing to have effect. See clause 24.7(b) (i).

Note 2: Under section 88(2) of the Fair Work Act, the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

24.8 Excessive leave accruals: request by employee for leave

[24.8 inserted by [PR582967](#) ppc 29Jul16]

- (a) Clause 24.8 comes into operation from 29 July 2017.
- (b) If an employee has genuinely tried to reach agreement with an employer under clause 24.6(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (c) However, an employee may only give a notice to the employer under paragraph (b) if:
 - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
 - (ii) the employee has not been given a direction under clause 24.7(a) that, when any other paid annual leave arrangements (whether made under clause 24.6, 24.7 or 24.8 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (d) A notice given by an employee under paragraph (b) must not:

- (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 24.6, 24.7 or 24.8 or otherwise agreed by the employer and employee) are taken into account; or
 - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
 - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
 - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (e) An employee is not entitled to request by a notice under paragraph (b) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 24.2) in any period of 12 months.
- (f) The employer must grant paid annual leave requested by a notice under paragraph (b).

24.9 Cashing out of annual leave

[24.9 inserted by [PR582967](#) ppc 29Jul16]

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 24.9.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 24.9.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 24.9 must state:
 - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
 - (ii) the date on which the payment is to be made.
- (e) An agreement under clause 24.9 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.

- (i) The employer must keep a copy of any agreement under clause 24.9 as an employee record.

Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 24.9.

Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 24.9.

Note 3: An example of the type of agreement required by clause 24.9 is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H.

25. Personal/carer's leave and compassionate leave

[23 renumbered as 24 by [PR990706](#), 24 renumbered as 25 by [PR507824](#) ppc 24Mar11]

Personal/carer's leave and compassionate leave are provided for in the NES.

26. Community service leave

[24 renumbered as 25 by [PR990706](#), 25 renumbered as 26 by [PR507824](#) ppc 24Mar11]

Community service leave is provided for in the NES.

27. Public holidays

[25 renumbered as 26 by [PR990706](#), 26 renumbered as 27 by [PR507824](#) ppc 24Mar11]

27.1 Public holidays are provided for in the NES.

27.2 An employer and the employees may by agreement substitute another day for a public holiday.

27.3 Work on a public holiday or a substituted day must be paid at double time and a half. Where both a public holiday and substitute day are worked, public holiday penalties are payable on one of those days at the election of the employee. An employee required to work on a public holiday is entitled to not less than four hours pay at the rates prescribed by this clause, provided the employee is available to work for four hours.

Schedule A—Transitional Provisions

[Sched A inserted by [PR988363](#) from 01Jan10; varied by [PR990706](#), [PR994548](#), [PR503623](#)]

A.1 General

A.1.1 The provisions of this schedule deal with minimum obligations only.

[A.1.2 substituted by [PR994548](#) from 01Jan10]

A.1.2 The provisions of this schedule are to be applied:

- (a) when there is a difference, in money or percentage terms, between a provision in a relevant transitional minimum wage instrument (including the transitional default casual loading) or award-based transitional instrument on the one hand and an equivalent provision in this award on the other;
- (b) when a loading or penalty in a relevant transitional minimum wage instrument or award-based transitional instrument has no equivalent provision in this award;
- (c) when a loading or penalty in this award has no equivalent provision in a relevant transitional minimum wage instrument or award-based transitional instrument; or
- (d) when there is a loading or penalty in this award but there is no relevant transitional minimum wage instrument or award-based transitional instrument.

A.2 Minimum wages – existing minimum wage lower

A.2.1 The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

- (a) was obliged,

[A.2.1 (b) substituted by [PR994548](#) from 01Jan10]

- (b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
- (c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by a transitional minimum wage instrument and/or an award-based transitional instrument to pay a minimum wage lower than that in this award for any classification of employee.

A.2.2 In this clause minimum wage includes:

- (a) a minimum wage for a junior employee, an employee to whom training arrangements apply and an employee with a disability;
- (b) a piecework rate; and
- (c) any applicable industry allowance.

A.2.3 Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the minimum wage in the relevant transitional minimum wage instrument and/or award-based transitional instrument for the classification concerned.

A.2.4 The difference between the minimum wage for the classification in this award and the minimum wage in clause A.2.3 is referred to as the transitional amount.

A.2.5 From the following dates the employer must pay no less than the minimum wage for the classification in this award minus the specified proportion of the transitional amount:

First full pay period on or after

1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

A.2.6 The employer must apply any increase in minimum wages in this award resulting from an annual wage review.

A.2.7 These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

A.3 Minimum wages – existing minimum wage higher

A.3.1 The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

(a) was obliged,

[A.3.1 (b) substituted by [PR994548](#) from 01Jan10]

(b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or

(c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by a transitional minimum wage instrument and/or an award-based transitional instrument to pay a minimum wage higher than that in this award for any classification of employee.

A.3.2 In this clause minimum wage includes:

(a) a minimum wage for a junior employee, an employee to whom training arrangements apply and an employee with a disability;

(b) a piecework rate; and

(c) any applicable industry allowance.

A.3.3 Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the minimum wage in the relevant transitional minimum wage instrument and/or award-based transitional instrument for the classification concerned.

A.3.4 The difference between the minimum wage for the classification in this award and the minimum wage in clause A.3.3 is referred to as the transitional amount.

A.3.5 From the following dates the employer must pay no less than the minimum wage for the classification in this award plus the specified proportion of the transitional amount:

First full pay period on or after

1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

A.3.6 The employer must apply any increase in minimum wages in this award resulting from an annual wage review. If the transitional amount is equal to or less than any increase in minimum wages resulting from the 2010 annual wage review the transitional amount is to be set off against the increase and the other provisions of this clause will not apply.

A.3.7 These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

A.4 Loadings and penalty rates

For the purposes of this schedule loading or penalty means a:

- casual or part-time loading;
- Saturday, Sunday, public holiday, evening or other penalty;
- shift allowance/penalty.

A.5 Loadings and penalty rates – existing loading or penalty rate lower

[A.5.1 substituted by [PR994548](#) from 01Jan10]

A.5.1 The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

- (a) was obliged,
- (b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
- (c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by the terms of a transitional minimum wage instrument or an award-based transitional instrument to pay a particular loading or penalty at a lower rate than the equivalent loading or penalty in this award for any classification of employee.

[A.5.2 substituted by [PR994548](#) from 01Jan10]

A.5.2 Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the loading or penalty in the relevant transitional minimum wage instrument or award-based transitional instrument for the classification concerned.

A.5.3 The difference between the loading and penalty in this award and the rate in clause A.5.2 is referred to as the transitional percentage.

A.5.4 From the following dates the employer must pay no less than the loading or penalty in this award minus the specified proportion of the transitional percentage:

First full pay period on or after

1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

A.5.5 These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

A.6 Loadings and penalty rates – existing loading or penalty rate higher

[A.6.1 substituted by [PR994548](#) from 01Jan10]

A.6.1 The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

- (a) was obliged,
- (b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
- (c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by the terms of a transitional minimum wage instrument or an award-based transitional instrument to pay a particular loading or penalty at a higher rate than the equivalent loading or penalty in this award, or to pay a particular loading or penalty and there is no equivalent loading or penalty in this award, for any classification of employee.

[A.6.2 substituted by [PR994548](#) from 01Jan10]

A.6.2 Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the loading or penalty in the relevant transitional minimum wage instrument or award-based transitional instrument.

[A.6.3 substituted by [PR994548](#) from 01Jan10]

A.6.3 The difference between the loading or penalty in this award and the rate in clause A.6.2 is referred to as the transitional percentage. Where there is no equivalent loading or penalty in this award, the transitional percentage is the rate in A.6.2.

A.6.4 From the following dates the employer must pay no less than the loading or penalty in this award plus the specified proportion of the transitional percentage:

First full pay period on or after

1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

A.6.5 These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

A.7 Loadings and penalty rates – no existing loading or penalty rate

[A.7.1 substituted by [PR994548](#) from 01Jan10]

A.7.1 The following transitional arrangements apply to an employer not covered by clause A.5 or A.6 in relation to a particular loading or penalty in this award.

A.7.2 Prior to the first full pay period on or after 1 July 2010 the employer need not pay the loading or penalty in this award.

[A.7.3 substituted by [PR994548](#) from 01Jan10]

A.7.3 From the following dates the employer must pay no less than the following percentage of the loading or penalty in this award:

First full pay period on or after

1 July 2010	20%
1 July 2011	40%
1 July 2012	60%
1 July 2013	80%

A.7.4 These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

A.8 Exemption clauses

A.8.1 This provision applies to an employer which, immediately prior to 1 January 2010:

- (a) was entitled,
- (b) but for the operation of an agreement-based transitional instrument would have been entitled, or
- (c) if it had been an employer in the industry or of the occupations covered by this award would have been entitled

by a term in an award-based transitional instrument (the exemption clause) to not apply certain provisions of the instrument to an employee paid above a specified rate of pay.

A.8.2 Until 30 June 2010 the exemption clause will continue to apply to an employer of the kind in clause A.8.1 as if the clause were a term of this award and operated in relation to the corresponding provisions of this award rather than the provisions of the instrument.

A.9 Former Division 2B employers

[A.9 inserted by [PR503623](#).ppc 01Jan11]

A.9.1 This clause applies to an employer which, immediately prior to 1 January 2011, was covered by a Division 2B State award.

A.9.2 All of the terms of a Division 2B State award applying to a Division 2B employer are continued in effect until the end of the full pay period commencing before 1 February 2011.

A.9.3 Subject to this clause, from the first full pay period commencing on or after 1 February 2011 a Division 2B employer must pay no less than the minimum wages, loadings and penalty rates which it would be required to pay under this Schedule if it had been a national system employer immediately prior to 1 January 2010.

A.9.4 Despite clause A.9.3, where a minimum wage, loading or penalty rate in a Division 2B State award immediately prior to 1 February 2011 was lower than the corresponding minimum wage, loading or penalty rate in this award, nothing in this Schedule requires a Division 2B employer to pay more than the minimum wage, loading or penalty rate in this award.

A.9.5 Despite clause A.9.3, where a minimum wage, loading or penalty rate in a Division 2B State award immediately prior to 1 February 2011 was higher than the corresponding minimum wage, loading or penalty rate in this award, nothing in this Schedule requires a Division 2B employer to pay less than the minimum wage, loading or penalty rate in this award.

A.9.6 In relation to a Division 2B employer this Schedule commences to operate from the beginning of the first full pay period on or after 1 January 2011 and ceases to operate from the beginning of the first full pay period on or after 1 July 2014.

Schedule B—Classification Structure

[Sched A renumbered as Sched B by [PR988363](#) from 01Jan10; varied by [PR543670](#)]

B.1 Level 1

A Level 1 position is one in which employees work within established routines, methods and procedures that are predictable and may require the exercise of limited discretion.

Typical activities and skills may include but are not limited to:

- applying basic office procedures;
- operating office equipment;
- receiving, sorting, distributing and filing correspondence and documents;
- performing basic manual or technical duties;
- performing defined data entry/inquiry tasks; and/or
- answering enquiries using a general knowledge of the employer's services.

Indicative job list—office trainee, filing clerk, mail sorting clerk, switchboard operator, assistant receptionist, messenger, yardhand, canteen worker, cleaner, deposit officer, scanning officer.

B.2 Level 2

A Level 2 position performs tasks and service requirements given authority within defined limits and employer established guidelines, using a more extensive range of skills and knowledge at a level higher than in Level 1.

Level 2 employees are responsible for their own work which is performed within established routines, methods and procedures.

Typical activities and skills may include but are not limited to:

- processing of standard documentation;
- undertaking cashiering functions;
- answering enquiries from members and external parties using a detailed knowledge of specific business activities;
- drafting correspondence appropriate to job function;
- organising own work schedule; and/or
- providing information/assistance to other staff members.

Indicative job list—telemarketers, sales and service trainees, data processing officers, teller/customer service representatives with less than 12 months experience, entry level claims officer.

B.3 Level 3

A Level 3 position is one in which tasks and service requirements are performed using a more extensive range of skills and knowledge at a higher level than required in Level 2.

The position encompasses limited discretion in achieving task outcomes. A level of delegation and authority may be employed consistent with the job function and is performed predominantly within established policies and guidelines.

Those employed at this level are responsible and accountable for their own work, and may be expected to provide direction to other staff.

Typical activities and skills may include but are not limited to:

- undertaking of projects;
- preparing reports and recommendations within their own job function;
- drafting of routine correspondence;
- administering/maintaining staff records; and/or
- delivery and/or co-ordination of learning and development activities.

Indicative job list—receptionist, loans, processing officer, helpdesk operator, credit analyst, card services operator, contact centre officer, payroll clerk, teller or sales representative with at least 12 months experience, insurance clerk, case manager, account manager, technical officer, statistical clerk.

B.4 Level 4

A Level 4 position is one in which tasks and service requirements are performed using a more extensive range of skills and knowledge at a level higher than required at Level 3. Those employed at this level are responsible for their own work and any employees under their control.

Positions at this level require the application of relevant specialist knowledge and experience.

Those employed at this level would be required to advise on a range of activities and contribute to the determination of objectives within the required area of expertise.

Typical activities and skills may include but are not limited to:

- managing and maintaining service standards;
- overseeing day-to-day operations of functional areas of responsibilities;
- implementing and maintaining effective controls;
- initiating disciplinary processes;
- assisting with the recruitment and selection of staff; and/or
- preparing of reports.

Indicative job list—human resource officer, learning and development officer, compliance officer, personal assistant, assistant accountant, accounts officer, claims officer, assistant underwriter, customer relationship manager, settlement officer, collections officer, lending officer, administrative officer, personal lending relationship officer, personal banker, customer service specialist agency officer, branch services officer, senior case manager, entry level team leader, senior technical officer.

B.5 Level 5

A Level 5 position is one in which tasks, service requirements and supervisory functions are performed using a more extensive range of skills and knowledge at a higher level than required at Level 4.

The position may be:

- (a) a specialised role, possibly supported by one or two junior staff members, requiring formal qualifications and/or specialised vocational training; and/or
- (b) a managerial role (managing 5–10 people) responsible for the operation of part or parts of the employer’s business.

Those employed at this level exercise considerable discretion and/or are responsible for operational planning.

Indicative job list—human resources consultant, senior learning and development officer, accountant, senior claims officer, analyst programmer, fraud investigator, call centre team leader, credit controller, administration manager, underwriter, sales manager, customer service team leader, assessor, loss control officer, business analyst, assistant branch manager, personal lending specialist, team leader.

B.6 Level 6

[B.6 substituted by [PR543670](#) ppc 21Oct13]

A Level 6 position typically performs a middle managerial role primarily to control the conduct of a part of the employer’s business and in which decisions are regularly made and responsibility accepted on matters relating to the administration and conduct of the part of the business. Those responsible for managing more than 10 people must be classified at this level provided that this level 6 classification does not cover classes of employees:

- (a) who, because of the nature or seniority of their role, were not traditionally covered at all by awards; or
- (b) who perform work that is not of a similar nature to work that has previously been regulated at all by awards.

Indicative job list—branch manager, human resources or fraudulent relations manager, financial planners, information technology specialists, relationship manager, senior analyst, subject matter manager, divisional manager.

Schedule C—School-based Apprentices

[Sched B renumbered as Sched C by [PR988363](#) from 01Jan10]

- C.1** This schedule applies to school-based apprentices. A school-based apprentice is a person who is undertaking an apprenticeship in accordance with this schedule while also undertaking a course of secondary education.
- C.2** A school-based apprenticeship may be undertaken in the trades covered by this award under a training agreement or contract of training for an apprentice declared or recognised by the relevant State or Territory authority.
- C.3** The relevant minimum wages for full-time junior and adult apprentices provided for in this award, calculated hourly, will apply to school-based apprentices for total hours worked including time deemed to be spent in off-the-job training.
- C.4** For the purposes of clause C.3, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice must be paid is 25% of the actual hours worked each week on-the-job. The wages paid for training time may be averaged over the semester or year.
- C.5** A school-based apprentice must be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.
- C.6** For the purposes of this schedule, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.
- C.7** The duration of the apprenticeship must be as specified in the training agreement or contract for each apprentice but must not exceed six years.
- C.8** School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each two years of employment as an apprentice.
- C.9** The apprentice wage scales are based on a standard full-time apprenticeship of four years (unless the apprenticeship is of three years duration). The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.
- C.10** If an apprentice converts from school-based to full-time, all time spent as a full-time apprentice will count for the purposes of progression through the relevant wage scale in addition to the progression achieved as a school-based apprentice.
- C.11** School-based apprentices are entitled pro rata to all of the other conditions in this award.

Schedule D—Supported Wage System

[Sched C renumbered as Sched D by [PR988363](#) from 01Jan10; varied by [PR994548](#), [PR998748](#), [PR510670](#), [PR525068](#), [PR537893](#), [PR542139](#), [PR551831](#), [PR568050](#), [PR581528](#)]

D.1 This schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award.

[D.2 varied by [PR568050](#) ppc 01Jul15]

D.2 In this schedule:

approved assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

assessment instrument means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme

relevant minimum wage means the minimum wage prescribed in this award for the class of work for which an employee is engaged

supported wage system means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: www.jobaccess.gov.au

SWS wage assessment agreement means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate

D.3 Eligibility criteria

D31 Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

D32 This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.

D.4 Supported wage rates

D41 Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

Assessed capacity (clause D.5)	Relevant minimum wage
%	%
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

[D.4.2 varied by [PR994548](#), [PR998748](#), [PR510670](#), [PR525068](#), [PR537893](#), [PR551831](#), [PR568050](#), [PR581528](#)

ppc 01Jul16]

D42 Provided that the minimum amount payable must be not less than \$82 per week.

D43 Where an employee's assessed capacity is 10%, they must receive a high degree of assistance and support.

D.5 Assessment of capacity

D51 For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.

D52 All assessments made under this schedule must be documented in an SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

D.6 Lodgement of SWS wage assessment agreement

[D.6.1 varied by [PR994548](#), [PR542139](#) ppc 04Dec13]

D61 All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.

[D.6.2 varied by [PR994548](#), [PR542139](#) ppc 04Dec13]

D.6.2 All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the award is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

D.7 Review of assessment

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the supported wage system.

D.8 Other terms and conditions of employment

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this schedule will be entitled to the same terms and conditions of employment as other workers covered by this award on a pro rata basis.

D.9 Workplace adjustment

An employer wishing to employ a person under the provisions of this schedule must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

D.10 Trial period

D.10.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

D.10.2 During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.

[D.10.3 varied by [PR994548](#), [PR998748](#), [PR510670](#), [PR525068](#), [PR537893](#), [PR551831](#), [PR568050](#), [PR581528](#)

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D.10.3 The minimum amount payable to the employee during the trial period must be no less than \$82 per week.

D.10.4 Work trials should include induction or training as appropriate to the job being trialled.

D.10.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause D.5.

Schedule E—National Training Wage

[Sched E inserted by [PR507824](#), ppc 24Mar11; varied by [PR509050](#), [PR522881](#), [PR536684](#), [PR545787](#), [PR551607](#), [PR566687](#), [PR579780](#)]

E.1 Title

This is the *National Training Wage Schedule*.

E.2 Definitions

In this schedule:

adult trainee is a trainee who would qualify for the highest minimum wage in Wage Level A, B or C if covered by that wage level

approved training means the training specified in the training contract

Australian Qualifications Framework (AQF) is a national framework for qualifications in post-compulsory education and training

out of school refers only to periods out of school beyond Year 10 as at the first of January in each year and is deemed to:

- (c) include any period of schooling beyond Year 10 which was not part of or did not contribute to a completed year of schooling;
- (d) include any period during which a trainee repeats in whole or part a year of schooling beyond Year 10; and
- (e) not include any period during a calendar year in which a year of schooling is completed

relevant State or Territory training authority means the bodies in the relevant State or Territory which exercise approval powers in relation to traineeships and register training contracts under the relevant State or Territory vocational education and training legislation

relevant State or Territory vocational education and training legislation means the following or any successor legislation:

Australian Capital Territory: *Training and Tertiary Education Act 2003*;

New South Wales: *Apprenticeship and Traineeship Act 2001*;

Northern Territory: *Northern Territory Employment and Training Act 1991*;

Queensland: *Vocational Education, Training and Employment Act 2000*;

South Australia: *Training and Skills Development Act 2008*;

Tasmania: *Vocational Education and Training Act 1994*;

Victoria: *Education and Training Reform Act 2006*; or

Western Australia: *Vocational Education and Training Act 1996*

trainee is an employee undertaking a traineeship under a training contract

traineeship means a system of training which has been approved by the relevant State or Territory training authority, which meets the requirements of a training package developed by the relevant Industry Skills Council and endorsed by the National Quality Council, and which leads to an AQF certificate level qualification

training contract means an agreement for a traineeship made between an employer and an employee which is registered with the relevant State or Territory training authority

training package means the competency standards and associated assessment guidelines for an AQF certificate level qualification which have been endorsed for an industry or enterprise by the National Quality Council and placed on the National Training Information Service with the approval of the Commonwealth, State and Territory Ministers responsible for vocational education and training, and includes any relevant replacement training package

year 10 includes any year before Year 10

E.3 Coverage

E31 Subject to clauses E.3.2 to E.3.6 of this schedule, this schedule applies in respect of an employee covered by this award who is undertaking a traineeship whose training package and AQF certificate level is allocated to a wage level by Appendix E1 to this schedule or by clause E.5.4 of this schedule.

E32 This schedule only applies to AQF Certificate Level IV traineeships for which a relevant AQF Certificate Level III traineeship is listed in Appendix E1 to this schedule.

E33 This schedule does not apply to the apprenticeship system or to any training program which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 25 June 1997.

E34 This schedule does not apply to qualifications not identified in training packages or to qualifications in training packages which are not identified as appropriate for a traineeship.

E35 Where the terms and conditions of this schedule conflict with other terms and conditions of this award dealing with traineeships, the other terms and conditions of this award prevail.

E36 At the conclusion of the traineeship, this schedule ceases to apply to the employee.

E.4 Types of Traineeship

The following types of traineeship are available under this schedule:

E41 a full-time traineeship based on 38 ordinary hours per week, with 20% of ordinary hours being approved training; and

E42 a part-time traineeship based on less than 38 ordinary hours per week, with 20% of ordinary hours being approved training solely on-the-job or partly on-the-job and partly off-the-job, or where training is fully off-the-job.

E.5 Minimum Wages

[E.5 substituted by [PR509050](#), [PR522881](#), [PR536684](#), [PR551607](#), [PR566687](#), [PR579780](#) ppc 01Jul16]

E51 Minimum wages for full-time traineeships

(a) Wage Level A

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by Appendix E1 are:

	Highest year of schooling completed		
	Year 10 per week	Year 11 per week	Year 12 per week
	\$	\$	\$
School leaver	302.20	332.80	396.50
Plus 1 year out of school	332.80	396.50	461.40
Plus 2 years out of school	396.50	461.40	537.00
Plus 3 years out of school	461.40	537.00	614.80
Plus 4 years out of school	537.00	614.80	
Plus 5 or more years out of school	614.80		

(b) Wage Level B

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by Appendix E1 are:

	Highest year of schooling completed		
	Year 10 per week	Year 11 Per week	Year 12 per week
	\$	\$	\$
School leaver	302.20	332.80	385.80
Plus 1 year out of school	332.80	385.80	443.80
Plus 2 years out of school	385.80	443.80	520.40
Plus 3 years out of school	443.80	520.40	593.60
Plus 4 years out of school	520.40	593.60	
Plus 5 or more years out of school	593.60		

(c) Wage Level C

Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by Appendix E1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
	\$	\$	\$
School leaver	302.20	332.80	385.80
Plus 1 year out of school	332.80	385.80	434.30
Plus 2 years out of school	385.80	434.30	485.20
Plus 3 years out of school	434.30	485.20	540.60
Plus 4 years out of school	485.20	540.60	
Plus 5 or more years out of school	540.60		

(d) AQF Certificate Level IV traineeships

- (i)** Subject to clause E.5.3 of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level IV traineeship are the minimum wages for the relevant full-time AQF Certificate Level III traineeship with the addition of 3.8% to those minimum wages.
- (ii)** Subject to clause E.5.3 of this schedule, the minimum wages for an adult trainee undertaking a full-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:

Wage level	First year of	Second and
	traineeship	subsequent years of
	per week	traineeship
	\$	per week
	\$	\$
Wage Level A	638.50	663.20
Wage Level B	616.00	639.70
Wage Level C	560.60	581.80

E52 Minimum wages for part-time traineeships

(a) Wage Level A

Subject to clauses E.5.2 (f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level A by Appendix E1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	9.94	10.96	13.05
Plus 1 year out of school	10.96	13.05	15.19
Plus 2 years out of school	13.05	15.19	17.66
Plus 3 years out of school	15.19	17.66	20.21
Plus 4 years out of school	17.66	20.21	
Plus 5 or more years out of school	20.21		

(b) Wage Level B

Subject to clauses E.5.2 (f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by Appendix E1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	9.94	10.96	12.70
Plus 1 year out of school	10.96	12.70	14.60
Plus 2 years out of school	12.70	14.60	17.13
Plus 3 years out of school	14.60	17.13	19.54
Plus 4 years out of school	17.13	19.54	
Plus 5 or more years out of school	19.54		

(c) Wage Level C

Subject to clauses E.5.2 (f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level C by Appendix E1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
School leaver	9.94	10.96	12.70
Plus 1 year out of school	10.96	12.70	14.28
Plus 2 years out of school	12.70	14.28	15.95

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
	\$	\$	\$
Plus 3 years out of school	14.28	15.95	17.78
Plus 4 years out of school	15.95	17.78	
Plus 5 or more years out of school	17.78		

(d) School-based traineeships

Subject to clauses E.5.2 (f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a school-based AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Levels A, B or C by Appendix E1 are as follows when the trainee works ordinary hours:

Year of schooling	
Year 11 or lower	Year 12
per hour	per hour
\$	\$
9.94	10.96

(e) AQF Certificate Level IV traineeships

- (i) Subject to clauses E.5.2 (f) and E.5.3 of this schedule, the minimum wages for a trainee undertaking a part-time AQF Certificate Level IV traineeship are the minimum wages for the relevant part-time AQF Certificate Level III traineeship with the addition of 3.8% to those minimum wages.
- (ii) Subject to clauses E.5.1(a) and E.5.3 of this schedule, the minimum wages for an adult trainee undertaking a part-time AQF Certificate Level IV traineeship are as follows, provided that the relevant wage level is that for the relevant AQF Certificate Level III traineeship:

Wage level	First year of traineeship	Second and subsequent years of traineeship
	per hour	per hour
	\$	\$
Wage Level A	21.00	21.82
Wage Level B	20.24	21.03
Wage Level C	18.44	19.15

(f) Calculating the actual minimum wage

- (i) Where the full-time ordinary hours of work are not 38 or an average of 38 per week, the appropriate hourly minimum wage is obtained by multiplying the relevant minimum wage in clauses E.5.2 (a)–(e) of this schedule by 38 and then dividing the figure obtained by the full-time ordinary hours of work per week.

- (ii) Where the approved training for a part-time traineeship is provided fully off-the-job by a registered training organisation, for example at school or at TAFE, the relevant minimum wage in clauses E.5.2(a)–(e) of this schedule applies to each ordinary hour worked by the trainee.
- (iii) Where the approved training for a part-time traineeship is undertaken solely on-the-job or partly on-the-job and partly off-the-job, the relevant minimum wage in clauses E.5.2 (a)–(e) of this schedule minus 20% applies to each ordinary hour worked by the trainee.

E53 Other minimum wage provisions

- (a) An employee who was employed by an employer immediately prior to becoming a trainee with that employer must not suffer a reduction in their minimum wage per week or per hour by virtue of becoming a trainee. Casual loadings will be disregarded when determining whether the employee has suffered a reduction in their minimum wage.
- (b) If a qualification is converted from an AQF Certificate Level II to an AQF Certificate Level III traineeship, or from an AQF Certificate Level III to an AQF Certificate Level IV traineeship, then the trainee must be paid the next highest minimum wage provided in this schedule, where a higher minimum wage is provided for the new AQF certificate level.

E54 Default wage rate

The minimum wage for a trainee undertaking an AQF Certificate Level I–III traineeship whose training package and AQF certificate level are not allocated to a wage level by Appendix E1 is the relevant minimum wage under this schedule for a trainee undertaking an AQF Certificate to Level I–III traineeship whose training package and AQF certificate level are allocated to Wage Level B.

E.6 Employment conditions

E61 A trainee undertaking a school-based traineeship may, with the agreement of the trainee, be paid an additional loading of 25% on all ordinary hours worked instead of paid annual leave, paid personal/carer’s leave and paid absence on public holidays, provided that where the trainee works on a public holiday then the public holiday provisions of this award apply.

E62 A trainee is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.

E.63 Time spent by a trainee, other than a trainee undertaking a school-based traineeship, in attending any training and assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the trainee's wages and determining the trainee's employment conditions.

[Note inserted by [PR545787](#)_ppc 01Jan14]

Note: The time to be included for the purpose of calculating the wages for part-time trainees whose approved training is fully off-the-job is determined by clause E.5.2 (f) (ii) and not by this clause.

E.64 Subject to clause E.3.5 of this schedule, all other terms and conditions of this award apply to a trainee unless specifically varied by this schedule.

Appendix E1: Allocation of Traineeships to Wage Levels

The wage levels applying to training packages and their AQF certificate levels are:

E1.1 Wage Level A

Training package	AQF certificate level
Aeroskills	II
Aviation	I II III
Beauty	III
Business Services	I II III
Chemical, Hydrocarbons and Refining	I II III
Civil Construction	III
Coal Training Package	II III
Community Services	II III
Construction, Plumbing and Services Integrated Framework	I II III
Correctional Services	II III
Drilling	II III
Electricity Supply Industry—Generation Sector	II III (in Western Australia only)
Electricity Supply Industry—Transmission, Distribution and Rail Sector	II
Electrotechnology	I II III (in Western Australia only)
Financial Services	I II III
Floristry	III
Food Processing Industry	III

Training package	AQF certificate level
Gas Industry	III
Information and Communications Technology	I II III
Laboratory Operations	II III
Local Government (other than Operational Works Cert I and II)	I II III
Manufactured Mineral Products	III
Manufacturing	I II III
Maritime	I II III
Metal and Engineering (Technical)	II III
Metalliferous Mining	II III
Museum, Library and Library/Information Services	II III
Plastics, Rubber and Cablemaking	III
Public Safety	III
Public Sector	II III
Pulp and Paper Manufacturing Industries	III
Retail Services (including wholesale and Community pharmacy)	III
Telecommunications	II III
Textiles, Clothing and Footwear	III
Tourism, Hospitality and Events	I II III
Training and Assessment	III
Transport and Distribution	III
Water Industry (Utilities)	III

E1.2 Wage Level B

Training package	AQF certificate level
Animal Care and Management	I II III
Asset Maintenance	I II III
Australian Meat Industry	I II III
Automotive Industry Manufacturing	II III
Automotive Industry Retail, Service and Repair	I II III
Beauty	II
Caravan Industry	II III
Civil Construction	I
Community Recreation Industry	III
Entertainment	I II III
Extractive Industries	II III
Fitness Industry	III
Floristry	II
Food Processing Industry	I II
Forest and Forest Products Industry	I II III
Furnishing	I II III
Gas Industry	I II
Health	II III
Local Government (Operational Works)	I II

Training package	AQF certificate level
Manufactured Mineral Products	I II
Metal and Engineering (Production)	II III
Outdoor Recreation Industry	I II III
Plastics, Rubber and Cablemaking	II
Printing and Graphic Arts	II III
Property Services	I II III
Public Safety	I II
Pulp and Paper Manufacturing Industries	I II
Retail Services	I II
Screen and Media	I II III
Sport Industry	II III
Sugar Milling	I II III
Textiles, Clothing and Footwear	I II
Transport and Logistics	I II
Visual Arts, Craft and Design	I II III
Water Industry	I II

E1.3 Wage Level C

Training package	AQF certificate level
Agri-Food	I
Amenity Horticulture	I II III
Conservation and Land Management	I II III
Funeral Services	I II III
Music	I II III
Racing Industry	I II III
Rural Production	I II III
Seafood Industry	I II III

Schedule F—2016 Part-day Public Holidays

[Sched F inserted by [PR532630](#) ppc 23Nov12; renamed and varied by [PR544519](#) ppc 21Nov13; renamed and varied by [PR557581](#), [PR573679](#), [PR580863](#) ppc 31May16]

This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the NES.

- F.1** Where a part-day public holiday is declared or prescribed between 7.00pm and midnight on Christmas Eve (24 December 2016) or New Year's Eve (31 December 2016) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:
- (a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.
 - (b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.
 - (c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
 - (d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
 - (e) Excluding annualised salaried employees to whom clause F.1(f) applies, where an employee works any hours between 7.00pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
 - (f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00pm and midnight.

- (g) An employee not rostered to work between 7.00pm and midnight, other than an employee who has exercised their right in accordance with clause F.1 (a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.

This schedule is not intended to detract from or supplement the NES. This schedule is an interim provision and subject to further review.

Schedule G—Agreement to Take Annual Leave in Advance

[Sched G inserted by [PR582967](#) ppc 29Jul16]

Name of employee: _____

Name of employer: _____

8.3.5 The employer and employee agree that the employee will take a period of paid annual leave before the employee has accrued an entitlement to the leave:

The amount of leave to be taken in advance is: _____ hours/days

The leave in advance will commence on: _____/____/20____

Signature of employee: _____

Date signed: _____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: _____/____/20____

[If the employee is under 18 years of age - include:]

I agree that:

if, on termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken under this agreement, then the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

Schedule H—Agreement to Cash Out Annual Leave

[Sched H inserted by [PR582967](#) ppc 29Jul16]

Name of employee: _____

Name of employer: _____

8.3.6 The employer and employee agree to the employee cashing out a particular amount of the employee's accrued paid annual leave:

The amount of leave to be cashed out is: _____ hours/days

The payment to be made to the employee for the leave is: \$_____ subject to deduction of income tax/after deduction of income tax (strike out where not applicable)

The payment will be made to the employee on: ___/___/20___

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

APPENDIX I: PAY CALCULATOR FAIR WORK OMBUDSMAN WEBSITE

Figure F3-1 – Pay Calculator

Pay Calculator > Find your award

Save Saved sessions Start again next 1

Pay Calculator

The Pay Calculator calculates base pay rates, allowances and penalty rates (including overtime). It's the tool our Infoline advisers use to answer your enquiries.

To help you find the information you need, we'd like to know if you are an employee or an employer. This will help tailor the tool to use language relevant to you.

- I'm an employee looking for pay rates
- I'm an employer or business looking for pay rates

Show me pay rates as at

For pay rates before 1 July 2014, please use the [previous version](#) of this tool.

For an overview of PACT, watch our [Introduction to the Pay and Conditions Tool](#) video.



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Pay Calculator > Find your award

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Do you know your award?

Minimum pay rates come from awards and differ depending on the award that applies to a job or business.

- No, help me find the award that applies
- Yes, I know the award that applies

For help finding the right award in PACT, watch our [PACT- Award coverage](#) video.

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What is the employee's occupation?

Type in the occupation to generate a list of similar job titles (eg. waiter, shop assistant, receptionist).

Please select the job title from the list that best fits the occupation to help us find the awards that apply.

You can also choose to search by industry.

Retail

Your search returned 30 result(s)

- automotive retail employee
- general butcher in charge of a meat retail establishment
- retail assistant
- retail assistant manager
- retail employee
- retail employee - automotive store
- Retail employee level 1
- Retail employee level 2
- Retail employee level 3

Pay Calculator > Find your award

Select your award

You have selected:

- retail assistant

There are multiple awards that match the occupation and/or industry type you entered.

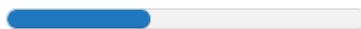
Please select the award that best matches the type of work being done.

Select an award from the list below ?

General Retail Industry Award 2010 View all awards

Your search returned 2 result(s)

- General Retail Industry Award 2010 (MA000004) v
- Educational Services (Schools) General Staff Award 2010 (MA000076) v



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Do any of these apply to your employee? [?](#)

Is your employee a trainee? [?](#)

- No
- Yes

Is your employee eligible for a supported wage? [?](#)

- No
- Yes

Is your employee an apprentice? [?](#)

- No
- Yes

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What is your employee's classification?

Classifications you have selected [▼](#)

Retail employee level 1 | Full-time

Click on 'View pay rate summary' to see pay rates for your selected classification(s).

To continue finding pay rates for multiple classifications, please select another classification from the list below.

[View pay rate summary](#)

A description of each classification can be found by clicking on the arrow next to the classification.

To see a full list of classifications, select the 'show all' button and choose the classification that best describes the work.

For help finding the right classification, watch our [PACT – Award classifications](#) video.

Filter classifications by keyword

Filter by keyword



Show all

Your employee's pay rates summary

The pay rates on this page are the same as those our advisers give to customers who contact our Infoline.

Pay rate as at: 26 February 2016

 [Edit calculation date](#)

Retail employee level 1 | Full-time

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Your award: General Retail Industry Award 2010 (MA000004) 

Employment Status: Full-time
 [Edit employment type](#)

Your selected penalty rates: None selected
 [Select penalties](#)

All purpose allowances: None selected
 [Select allowances](#)

Your selected allowances: None selected
 [Select allowances](#)

Pay Calculator > Find your award

[Save](#)

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Select allowances

Below is a list of allowances relevant to the classification and employment type selected. You may select more than one allowance to calculate.

You will be asked a series of eligibility questions to help you work out if the allowance or allowances apply.

For help calculating allowance, watch our [PACT - Allowances video](#).

[Select all](#)

Other

Meal allowance

Working away from usual workplace - excess travelling costs reimbursement

Vehicle allowance

First aid allowance

Laundry allowance

Cold work allowance

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Please answer the following:

What is the employee's type of employment? 

- Full-time
- Part-time
- Casual

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Please answer the following:

What is your employee's age?

- Under 16 years
- 16 years
- 17 years
- 18 years
- 19 years
- 20 years, employed by the employer for 6 months or less
- 20 years, employed by the employer for more than 6 months
- 21 years or over

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11

Please answer the following:

Do you require your employee to work more than 1 hour of overtime?

Yes No

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12

Please answer the following:

Do you tell your employee 24 hours before the end of their shift that they have to work overtime?

Yes No

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13

Please answer the following:

Does your employee have to work at a different branch or shop for 3 weeks or less?

Yes No

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14

Please answer the following:

Do you require your employee to use their own vehicle for work?

Yes No

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15

Please answer the following:

Have you appointed your employee to perform first aid duty?

Yes No

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