

Title

The Transition to Modern Awards: Challenges for Small and Medium Enterprises in Western Australia

Summary

Statistics gathered by the Department for Business Innovation and Skills (UK) in 2015 show that total employment in small and medium enterprises (SMEs) was 15.6 million, representing 60% of private sector employment in the United Kingdom. Similarly, SMEs in Australia are significant employers and this is reflected in the State of Western Australia (WA) where SMEs account for over 99% of employing businesses. While there is limited existing research into industrial relations compliance in SMEs, United Kingdom studies by Anderson and Ullah (2014), Harris (2002), Schmidt and colleagues (2007), and Ullah and Smith (2015) found that SMEs are challenged by the complexity of industrial legislation, are time poor, and balance time spent on compliance with business survival. These findings were supported by research into small business experience with regulations undertaken by the Australian Government Productivity Commission (2013). This latter research also found that small business owners are time poor, have limited time to read regulations, need help interpreting regulations, and that support material provided by Government needs to be simplified.

On 1 July 2009 the *Fair Work Act 2009* (Cth) (FWA) introduced compliance obligations for Australian employers under newly constructed Modern Awards. These 122 Modern Awards resulted from consolidation of thousands of Federal and State Industrial Awards, and each Modern Award contained Transitional Provisions that provided gradual changeover to new pay-rates over five years. Transitional

Provisions were intended to assist employers, but their complexity was underestimated and SMEs were ill-equipped to undertake the required diligence and calculation.

This paper considers the actions taken by forty-one (41) SME owner/managers in WA to comply with the obligations of the Modern Awards, and investigated their knowledge and awareness of those obligations and willingness to comply. The paper also presents a Stakeholder perception, represented by nine (9) participants drawn from Government, Unions and Employer Associations, of how SMEs navigated their obligations under the Modern Awards.

The research considers the complexity of Transitional Provisions and adequacy of 'free' support resources provided by Federal Government Agencies such as the Fair Work Ombudsman (FWO). Failure by SMEs to implement the Provisions accurately has consequences. Increased FWO regulatory audits into employer compliance provide evidence of SMEs being ordered to back-pay wages if found to have applied the wrong pay-rate. These audits attracted significant media attention and 'orders' for back-payments were accompanied by fines if SMEs were unable or unwilling to comply.

Literature

There is limited research into SME compliance with industrial legislation in both the Australian context and internationally. Nonetheless, there is sufficient Australian case law reflecting Industrial Tribunals' intolerance of employers who use inaccessibility to resources as a defence to non-compliance. Magistrate Hawkins (Victorian Magistrate's Court) stated, "...there is a need to send a message to the

community at large, and small employers particularly...steps must be taken to 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).

Australian researchers Lewis and colleagues (2015) reported on small business owners’ desire for simpler regulatory obligations. The researchers found that participants wanted “simplification”, “broadcasting in plain English”, “more assistance and less willingness to fine and punish”, and “consistent Federal rules to replace the eight State systems”.

Other studies found that complexity and lack of understanding by SMEs resulted in non-compliance with industrial legislation (Todd 2011; Todd & Hutchinson 2011). Compliance costs are a concern for SMEs and these costs are a combination of time and financial expenditure (Ullah & Smith 2015; Warfield & Stark-Jones 2012). Additionally, SMEs consider industrial obligations a lower priority when compared to accounting, production, and finance commitments (Parker et al. 2012; 2014). SMEs were also found to prefer self-regulation rather than Government regulation (Anderson & Ullah 2014; Debrah & Mmieh 2009; Hasle et al, 2012).

Methodology

As previously stated, there is limited research into industrial compliance in SMEs, both within Australia and the United Kingdom. Consequently, a constructivist paradigm was used to enable data gathering around participants’ lived experiences (Stewart 2010).

Data were drawn from interviews with 41 SME owner/managers and nine (9) Stakeholders to obtain perspectives of how SMEs navigate their industrial obligations. The semi-structured format of the interviews allowed participants to talk about their experience and perceived challenges in implementing Modern Awards and navigating the complex Transitional Arrangements.

SME participants were from the Retail, Hospitality and Resource sectors. Data analysis involved Braun and Clarke's (2006) six phases of thematic analysis and this approach supported flexibility and constant comparison. The data analysis was grounded in the interview transcripts and coded according to the relevant research questions. 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.

Findings and Conclusion

This research found that the *effort* expended by SMEs to understand and meet their industrial obligations influenced their behaviours when they encountered *complexity* interpreting the legislation. Some SMEs gave up and 'assumed' their obligations; that is, they did what they thought was right. Other owner/manager continued to search support websites, and some engaged fee-for-service expertise. Regardless of the course of action taken by SMEs when encountering *complexity*, *effort* to comply was found to be balanced with business *survival*. SMEs were inherently focused on maintaining profitability and considered industrial compliance an overhead. Further, *trust* in Government resources was found to influence SMEs inclination to invest *effort* accessing FWO support resources. SMEs were distrustful of Government Agencies that were both support provider and regulator, and were more confident

accessing 'trusted advisors' such as friends, family, accountants and business networks. SMEs sought *autonomy* and disliked regulation. Although SME owner/managers preferred to negotiate terms directly with their employees, they failed to recognise the inherent power inequality that exists. The findings of this research provide insights for Governments developing and implementing industrial legislation and planning needs to reflect the reality of business in the SME context. This reality check for legislators and regulators requires attention to matters such as transitional arrangements, time and costs, and the need for greater support and education for SMEs in understanding what industrial change seeks to achieve and why.

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