

Industrial Relations Reform and the Small Business Sector

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ABSTRACT

Since the mid-1970s the contribution of small businesses to economic activity and employment has become increasingly important in many developed countries. Governments have sought to reduce the legislative burden on the small business sector to promote its growth. In Australia, governments and the business lobby have emphasised reform to decentralise the industrial relations system and to reduce the role of unions in bargaining. Perceived benefits include increased flexibility, and freedom from interference by unions and other third parties. However, we argue that small businesses are unlikely to be major beneficiaries of changes to labour regulation. The small business sector enjoys a substantial degree of flexibility under the centralised award system, and the costs of decentralised formal bargaining appear outweigh the perceived benefits.

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Introduction

Since the 1970s, the small business sector has been an important engine for economic growth in developed countries. Governments in Australia and elsewhere have attempted to lessen the burden of legislative constraints on the sector, to facilitate its growth. In Australia, the federal government has argued that industrial relations reform — specifically the introduction of formalised enterprise and individual bargaining — would assist the expansion of the small business sector (DEWRSB 1998). However, available evidence suggests that these changes have had little impact on small businesses. The Australian Workplace Industrial Relations Survey of 1995 found that enterprise bargaining was confined to highly unionised sectors of the economy and amongst larger enterprises (Morehead et al. 1997). Since this survey more small businesses have undertaken formalised bargaining (White et al. 2001), but many more remain with awards and informal agreements. We argue that small businesses have rejected formalised bargaining in favour of the centralised system because it offers sufficient flexibility.

Small Business and the Characteristics of Employment

In Australia, during 1998–99 the small business sector encompassed 95 per cent (over 1,051,500 businesses) of total non-agricultural private sector businesses. These businesses employed 48 per cent of all private non-agricultural workers, or just under 3.4 million people in Australia (ABS 1999). Table 1 shows the breakdown by industry category. Industries such as construction and retail trade have very high concentrations of small businesses. Other sectors, for example mining and accommodation, cafés and restaurants, have slightly lower proportions of small businesses, but they are still a very significant component of the industry.

Table 1: The Percentage of Small Business by Industry Category (Source: ABS 1999)

Industry Category	Percentage of Small Business in Category
Mining	87.9
Manufacturing	91.5
Construction	99.0
Wholesale trade	90.4
Retail trade	97.0
Accommodation, Cafés & Restaurants	88.1
Transport and Storage	97.7
Finance and Insurance	94.1
Property and Business Services	97.6
Education	91.1
Health	95.3
Cultural and Recreational Services	95.9
Personal and Other Services	98.5

Moreover, there has been an employment shift towards small business so, at present, small business is contributing more to employment generation than larger firms (Australian Bureau of Industry Economics 1992). Since 1983–84 small business employment has increased at an average annual rate of 3.6 per cent compared with three per cent for all business (ABS 1999). Small businesses employing less than ten employees experienced the strongest growth, with an average annual increase of 4.5 per cent in the number of businesses. Businesses employing ten to nineteen persons experienced 3.6 per cent annual growth in the number of businesses. However, despite the growing importance of small business, this sector, especially its industrial relations processes, remains relatively under-researched.

We do know that small businesses tend to be labour intensive because they lack the financial resources to invest in high technology (Kotey 1999). Production depends heavily on the labour force, and wages, salaries, and other labour on-costs make up a high proportion of small business operating costs (Financial Management Research Centre 1992). Thus, employment relations are an important determinant of the success or otherwise of individual firms.

Employees in small firms typically work at several job tasks, enjoy limited career paths, and have low levels of formal training and high levels of turnover. Small businesses also have a reduced trade union presence, low award coverage, informal bargaining and dispute resolution mechanisms, and considerable managerial discretion (Burgess 1992).

Evidence suggests that the small business sector has also been an important employer of certain disadvantaged groups. Isaac et al. (1993, p. 7) found that in 33 per cent of small firms, half or more of all employees were female. There are more obvious differences in the *type* of employment. Casual employment is an important form of employment in the sector. Of the total number of recorded casual employees, 54 per cent work in the small business sector (ABS 1997, cited in Smith & Ewer 1999, p. 98). Significantly, of the total number of females working in small business, 42.6 per cent are casuals, while the corresponding figure for males employed as casuals in the sector is 30.2 per cent (ABS 1997, cited in Smith & Ewer 1999, p. 98). Women working in small businesses are particularly disadvantaged, because they are more likely than men to be casually employed. Callus et al. (1991) found that small businesses were also much more likely to employ younger people. Businesses with between five and nineteen employees, 42 per cent of employees were under twenty years old, while for businesses employing more than twenty employees, only twenty per cent were teenagers.

The employment of disadvantaged groups probably allows the small business sector to offer lower wages than larger enterprises. Evidence from studies in Australia and in other developed countries suggests that employees receive quite substantially

lower wages and non-wage benefits than employees from large enterprises (for example, Radiven et al. 1996, Buultjens 2001). The absence of unions in Australian small businesses also enables employers to offer lower wages.¹ The preparedness of small business to employ disadvantaged groups, their ability to pay these groups lower wages, and the fact that small business were less subject to labour regulation from unions and industrial relations authorities led Burgess (1992) to describe small business employment as 'precarious': there is often little job security and employees have little bargaining power.

Decentralisation, Labour Flexibility and Industrial Relations Reform

The microeconomic reform process begun in Australia in the mid-1980s attempted to lower the potential economic costs for business imposed by various types of regulation. Labour market reform through decentralisation was high on the agenda because governments and business lobby groups assumed that Australian labour market arrangements had prevented 'structural efficiency' from being achieved (Business Council of Australia 1988, 1989). Freeing up the labour market has aimed at allowing market forces to determine wages and conditions, through formalised enterprise and individual bargaining within a regulated framework.

Proponents of decentralisation argued that the setting of minimum wages and conditions via awards that covered the workforces of whole industries did not allow for the consideration of the capacity to pay at the enterprise level. This was especially important for the small business sector because relatively low profit margins make meeting minimum wage requirements difficult (Levin-Waldman 2000). Ideally, decentralisation would enable the pursuit of increased 'labour flexibility' by allowing small businesses greater autonomy to determine their wage payments.

The search for labour flexibility has been important in most developed countries (Campbell 1993). Post-Fordist theorists like Piore and Sabel (1984) and Mathews (1989) see the emphasis on labour flexibility as a response to changing production systems. They argue that production systems have changed from mass production to 'flexible specialisation' (Piore & Sabel 1984), and the new system requires freedom from the rigidities of the narrow job classifications based on Fordist production principles. Small businesses should thrive in this new environment, in which greater control and

¹ This situation was also noted in the UK. Until 1993 there were statutorily determined minimum wage rates that were substantially ignored by employers in the absence of unions (Millward et al. 1992, Rubery 1995). The setting of minimum wage rates in the UK was abandoned in 1993.

autonomy for employees, more rewarding and skilled jobs (Mathews 1989), and more mutually cooperative relations of production (Clarke 1992) should result.²

In the new production environment, conservatives argue that the external regulation of employment and interference from trade unions limits the achievement of flexible specialisation. Labour flexibility requires direct and cooperative relations between management and employees; external regulations through awards and unions distort the necessary adjustments (see Morgan 1994). Piore and Sabel (1984) argue that organisations have attempted to create a 'union-free' environment to bring about changes required for the flexible firm.

Influenced by these arguments, both Labor and Coalition governments have implemented formalised enterprise and individual bargaining in Australia. At the federal level, the *Industrial Relations Reform Act 1993* attempted to make formal enterprise bargaining more widely accessible.³ Under this legislation, certified agreements continued and enterprise flexibility agreements were introduced. Enterprise flexibility agreements could be made directly between an employer and his or her employees as long as a majority of employees supported the agreement. The making of an enterprise flexibility agreement did not depend on the existence of an interstate industrial dispute (unlike awards and certified agreements) and importantly, did not require trade union involvement in negotiations. However, unions had the right to make a submission to the Commission prior to certification of the agreement.

In 1996 the Coalition government introduced the *Workplace Relations and Other Legislation Amendment Act 1996* (the Workplace Relations Act). The full rigour of the deregulatory approach advocated by *Workplace Relations and Other Legislation Amendment Bill* was tempered by the wide-ranging amendments brokered with the Australian Democrats in order to ensure the passage of the Bill through the Senate. Despite the modifications the Act has altered the industrial relations landscape with the introduction of Australian Workplace Agreements (AWAs hereafter) and non-union certified agreements. In addition, awards have been stripped back to twenty allowable matters, because they are now expected to act only as a 'safety net' for the minority of people who could not negotiate a formalised agreement.

The *Workplace Relations Act 1996* also aimed to exempt the small business sector from unfair dismissal provisions. The Senate has rejected these measures on five occasions so far. However, the government has successfully made some changes that it argues

² Post-Fordist claims to improved efficiency and a better work culture have been criticised, however, for their claims of applying to all areas of an economy (Hampson, Ewer & Smith 1994).

³ At the state level, legislation has also been introduced in all states to facilitate the use of enterprise and individual bargaining. See Wallace Bruce (1998) for further details of changes in the different states.

favour the small business sector. For example, in September 2001 all new employees were excluded from unfair dismissal laws for three months. This period can be increased or decreased by written consent prior to the commencement of employment.

Despite the government's rhetoric, the desire to free small businesses from unfair dismissal provisions is — like the attempt to free the sector from the centralised system — based on ideology rather than reality. As the Full Bench of the Federal Court notes in the matter *Hamzy v Tricon International Restaurants t/as KFC and ors* (2001) [FAC 1589](#), 'in the absence of any evidence ... it seems to us the suggestion of a relationship between unfair dismissal laws and employment inhibition is unproven'.

Conservative forces have assumed that small businesses would benefit from the decentralisation of the industrial relations system and the introduction of enterprise and individual bargaining (Keirath 1995). They believed that formalised bargaining would free small business from:

1. the payment of minimum award wages and conditions, allowing individual small business to negotiate affordable wages. However, the no-disadvantage test may prevent this from eventuating. The no-disadvantage test means that, on balance, there must be no reduction in the overall terms and conditions of employment contained in any agreement when compared with the relevant award;
2. negative influences of trade unions. This factor was expected to make formalised bargaining particularly appealing to the small business sector, with its assumed strong anti-union sentiment, since it provides them with the ability to by-pass trade unions and negotiate directly with employees;
3. other negative outside influences such as the Industrial Relations Commission. Bargaining would allow small business owners and employees to directly negotiate in their common interests and in the process create a more harmonious workplace culture.

However, in practice small businesses have not been enthusiastically pursuing formalised enterprise and individual bargaining. We will show that, given the characteristics of the small business sector, this is not surprising.

Small Business and Industrial Relations Reform

It is difficult to accurately determine the level of formalised individual and enterprise bargaining in Australia; different studies provide different estimates. In the case of enterprise bargaining, these discrepancies probably arise because researchers use different definitions for 'enterprise bargaining'. The Australian Centre for Industrial Relations Research and Training (ACIRRT) (1999), for example, makes a distinction between workplaces that have 'pure enterprise agreements' and workplaces that have

a mixture of enterprise agreements and awards, where some 'enterprise agreements' may be written in terms and conditions underpinned by the award.

In general, the studies indicate that despite the introduction of formal enterprise bargaining legislation, somewhere between 35 per cent (ACIRRT 1999) and 22 per cent (DEWRSB 2000) of all employees under federal jurisdiction still have their wages and conditions wholly regulated by awards. Morehead et al. (1997), after an extensive survey of Australian workplaces, estimated 33 per cent of employees had their employment conditions and wages determined completely by awards. Approximately another 30 per cent of employees have their wages and conditions determined by a mixture of awards and enterprise agreements. Somewhere between one per cent (ACIRRT 1999) and 42 per cent (DEWRSB 2000) have their employment conditions totally regulated by enterprise agreements, while anywhere up to 40 per cent of the workforce under federal jurisdiction have their wages and conditions determined by individual contracts (ABS 2001).

Clearly, despite the legislative changes, a relatively large number of businesses prefer to remain within the centralised system. This preference is more common as firm size decreases. At the end of 2000, despite accounting for 95 per cent of all business, small business only accounted for 51.6 per cent of all current agreements (White et al. 2001). However, since 1997 agreement-making has been 'spreading to smaller businesses and/or smaller units within enterprises' (White et al. 2001, p. 13). The average number of employees covered by a certified agreement has fallen from over 1,000 in 1992 to just over 100 in 2000. This change has been even more pronounced in the private sector, where the average number of employees covered by an agreement has fallen from 424 in 1992 to 62 in 2000. These agreements appear to be restricted to a limited number of selected industries such as construction.

Determining the level of formalised *individual* bargaining is even more difficult than determining the level of formalised enterprise bargaining because of the secrecy provisions of AWAs (see McCallum 1997). As at 31 May 2000, 2,137 employers had successfully negotiated AWAs with 107,745 employees (OEA 2000). This is a cumulative total since the introduction of AWAs in 1997, and represents approximately 1.3 per cent of the workforce. By December 2001 the number of employees covered by AWAs has increased to 208,151 (OEA 2002). However, this still represents less than two per cent of the Australian workforce. While these figures are relatively small, Plowman (2001) suggests they overestimate, by at least half, the actual number of current AWAs, because data collection is cumulative, and includes AWAs that have expired or ceased to apply when firms close down operations or make employees redundant. Using Plowman's calculations, there may have been as few as a 100,000 agreements in place at the end of 2001.

The OEA statistics indicate that only six per cent of Australian Workplace Agreements cover employees from the small business sector. This suggests that there are approximately only 6000 agreements in place at the end of 2001. These figures are supported by Robbins and Voll (2002) who found, in a study of regional small businesses, that only four per cent of businesses had entered into AWAs covering two per cent of employees and only 0.5 per cent of non-managerial employees.

The Small Business Sector and the Failure of Formalised Bargaining

Clearly, the data indicate that small business employers are not engaging in formalised bargaining with their employees. This response is not surprising, considering the characteristics of the small business sector.

Proponents argue that formalised enterprise and/or individual bargaining will increase labour flexibility by reducing dependence on awards. Yet Morehead et al. (1997) found that 90 per cent of small businesses had at least one employee covered by an award. If firms are abiding by award provisions, then in theory, their labour flexibility should, according to the proponents of formalised enterprise bargaining, be substantially reduced. However, empirical evidence on award coverage and the small business sector is scanty, making this argument difficult to test.

The size of the workplace is an important determinant of the number of applicable awards. The smaller the size, the fewer awards in operation (Burgess 1992). Given that there are fewer awards applicable at smaller workplaces then it seems logical that small business operators would be aware of their obligations under the relevant award(s). Kitay and Sutcliffe (1989), Bultjens (1993), and Isaac et al. (1993) found respondents were aware of the awards that covered their workers. However, others for example, McGraw and Palmer (1990), Sappey (1983) found many employers were unaware of their obligations in regard to award wages and conditions. Many employers found awards to be lengthy and legalistic. They also found it difficult to keep up to date with variations to awards. This confusion is likely to continue with awards despite the simplification that has taken place since 1997. The NSW Department of Industrial Relations often run education sessions and they have also produced information kits for small business owners because they have prosecuted a number of small businesses for non-compliance across the State (see NSW Department of Industrial Relations 2002).

The difficulty many small business owners have with awards suggests that they are not meeting their award obligations. As Gittins (1992) notes, employers in non-unionised small businesses often do not honour award conditions. He argues that despite awards having the force of law they are not enacted in practice because unions do not police them. Therefore, no union presence results in non-compliance with inconvenient award provisions. Burgess (1992, p. 135) also comments the precarious nature of

employment conditions often means 'that award conditions are circumvented while trade union presence is minimal'. Indeed, many small business operators probably pay under-award wages and are thus not inconvenienced by wage increases.⁴

Lack of knowledge explains much non-compliance, but small business fail to meet their obligations for other reasons. Gittins (1992) argues that small employers resent their loss of rights and prerogatives and so deliberately infringe. They can do so because regulations are not well enforced, and they are confident their non-compliance will not be detected. Rainnie (1989) argues that small business owners take strategic decisions to pay low wages though the trade off is a high level of labour turnover. To reduce turnover, small businesses hire disadvantaged labour groups, especially married women, who are likely to be more stable at low wage rates. These groups are also taken on because they are reluctant to join trade unions.

Non-compliance with awards and the discretionary use of over-award payments has meant that small businesses were able to maintain wage flexibility under the centralised system. However, evidence suggests that even when small businesses comply with awards they are able to maintain wage flexibility. Kitay and Sutcliffe (1989), McGraw and Palmer (1990), and Buultjens (1993) found most small businesses opposed general deregulation of the labour market and were in favour of maintaining awards relevant to their business. Morehead et al. (1997) found that 76 per cent of small business managers agreed or strongly agreed with the statement that awards had worked well in the past for the workplace. Only nine per cent of managers disagreed or strongly disagreed with the statement. In comparison, in large private workplaces 60 per cent of managers agreed or strongly agreed with the statement. As a result, Rimmer (1998) suggests that there is little pressure on small business to exit the award structure in favour of the formalised bargaining stream because they are satisfied with the award system. Indeed, in small businesses operating in traditionally low paid industries such as hospitality, the award can provide management with an acceptable scapegoat for low wages. The industry standard is the cause for low pay rates: the award rate is low, but it is not the responsibility of the owner/manager, it is beyond their control (Orme 2000). Bargaining and negotiating their own pay rates would mean accepting responsibility for the low rates or accepting the need to increase pay rates.

It is reasonable to assume that wage flexibility would be more of a problem for small business than for medium and large business since labour costs make up a much larger proportion of total costs for small businesses than they do for medium and large businesses. Evidence suggests that awards do not significantly bind small

⁴ Research in Great Britain seems to confirm the Australian experience, that is, non-compliance by small business with government regulations on wage orders and employment legislation (Ford 1982, Rainnie 1989).

businesses. It could also be that small business operators are not as concerned with wages as proponents of deregulation assume they are. Bultjens (1993) found that small businesses are more interested in gaining flexibility in areas other than wages. Asked to rate the importance of five flexibility variables (numerical, work-time, functional, wage, and procedural), small business owners indicated the least important variable to them was their ability to alter wages to suit the prevailing economic conditions. Only 69 per cent of businesses considered this variable as either very important or important. Functional and work-time flexibility were clearly considered the most important flexibility variables with 90 per cent of businesses rating them as either very important or important. These were followed by numerical flexibility (84 per cent) and procedural flexibility (81 per cent). This suggests there are more pressing concerns in running a small business than gaining downward wage flexibility.

The number of small businesses paying over-award wages confirms this lack of concern over wages. Several studies have found over 70 per cent of small businesses pay over-awards (Isaac et al. 1993, Markey et al. 1997, Barrett 1999). Callus et al. (1991) and Morehead et al. (1997) found that small businesses reported they were more likely to pay over-award payments and performance related pay than did larger workplaces. For example, Morehead et al. (1997) found that 69 per cent of small businesses paid over-award payments to some their staff while 47 per cent of all workplaces with twenty or more employees did so. Sixty per cent of all private workplaces with twenty or more employee made over-award payments. These findings contrast with findings discussed above, which suggest small businesses pay *under-award* wages. The probable explanation is that wages are polarised in the small business sector. Businesses in some low wage industries, such as hospitality, pay very low or below award-wages while businesses in sectors relying on skilled employees pay above award wages in order to attract staff.

As with wage flexibility, award prescriptions do not appear to prevent procedural flexibility in small businesses. The employer-employee relationship within small business is very personalised. Employees often are known in advance and may be friends. Consequently, wage bargaining is more personalised and individual, and formal contracts very rarely entered into (MacMahon & Murphy 1999). The informality of relations and decision-making and the lack of union membership and influence could explain both the significant levels of flexibility within small businesses, and extent to which they remain uninhibited by the existence of awards. Morehead et al. (1997) found that awards did not impinge to any great extent on small businesses. They established that only fourteen per cent of managers in small businesses gave the existence of awards as a reason for not making changes they wanted to make, while in workplaces with twenty or more employees nine per cent of managers stated that awards had prevented them from making changes.

Another factor proponents argue should make enterprise and individual bargaining appealing to the small business sector is the anti-union bias of the current government's labour market reform agenda. Proponents of decentralisation assume that small business owners share this bias, which should make them amenable to formalised enterprise and individual bargaining because these processes allow employers to by-pass trade unions and negotiate directly with employees. Yet, in practice, it appears trade unions do not impinge greatly on the operations of small businesses, so there is no imperative to bypass unions in negotiations. Most studies (for example, Buultjens 1993, Morehead et al. 1997, Markey et al. 1997) show that up to 90 per cent of small business workplaces have no union members. On the other hand, Wooden's (2000) analysis of the AWIRS data concluded that the presence of active trade unions is one of the major factors influencing whether enterprise bargaining is likely to be present. Moreover, Morehead et al. (1997) established that only seven per cent of managers in small businesses stated they could not make changes because of employee, union, or union delegate actions. In comparison, seventeen per cent of private workplaces with twenty or more employees gave the same reason for not making changes at their workplace. These results indicate that, despite perceptions, small business owners have very little real need to reduce the influence of trade unions on their businesses.

The extent or depth of small business anti-union sentiment may also be overstated. Morehead et al. (1997) found that only eight per cent of managers in small businesses actively discouraged union membership. Approximately 88 per cent of managers stated that they neither discouraged nor encouraged union membership. However, a majority of managers (62 per cent) made it clear that they preferred to deal directly with employees than with unions, notwithstanding their noncommittal attitude to union membership. Additionally, in Australia some evidence suggests that in one industry at least, small business employers are not dissatisfied by regular visits from union officials as it reassures both employees and management that the employees are being paid correctly (Orme 1999).

Formalised bargaining involves, at a minimum, the costs of negotiating with an individual staff member or a group of employees. The employer will also, in all likelihood, have to supply information to staff involved in the bargaining process, and to employ a consultant to provide advice. These 'transaction costs' are an important consideration for small businesses, and along with a lack of skills and resources further explains their relative lack of interest in formalised bargaining. Lafferty (1998) argues that smaller workplaces have fewer resources than larger workplaces with which to negotiate enterprise agreements. Pragnell and O'Donnell (1997) found that small business owners were reluctant to negotiate enterprise agreements for several reasons. First, small business employers were concerned about the perceived lengthy delays in the registration of agreements due to the fastidious approach adopted by the industrial registrar. Second, they did not wish to

negotiate enterprise agreements with the employees as a collective, and believed that negotiating an enterprise agreement carried the risk of having to negotiate with a trade union. Third, and importantly, small employers felt they already enjoyed considerable flexibility under the award system and on balance chose to remain within it rather than risk negotiating an agreement. Overall, Short and Buchanan (1995) argue that many small business owners may believe that the costs of negotiating an agreement are not offset by the benefits gained.

Finally, the slow take up rate of AWAs amongst small business may partially be explained by the requirement for an employer to be incorporated under company law in order to be a party to an agreement. This may exclude a number of small businesses (van Barneveld & Waring 2002, Robbins & Voll 2002).

Conclusion

Lack of small business interest in formalised bargaining suggests that the centralised system already provides enough flexibility. However, policy makers appear unwilling to accept that small businesses are unlikely to sustain major benefits from formalised enterprise and individual bargaining. They argue that small businesses are reluctant to enter enterprise bargaining because they lack knowledge of its benefits (personal communication, Peter Reith). This is a simplistic view. It assumes governments and policy makers better understand the needs of small business than do their owners, and ignores the fact that 'the new institutional arrangements ... could have a deleterious effect on a sector (the small business sector) of the economy that has adapted well within the current system' (Callus et al. 1991, p. 138). A majority of small businesses have rejected the move to formalised enterprise and individual bargaining because the benefits are outweighed by the costs. It is unlikely that the situation will change in the near future.

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