



**Victorian Employers'  
Chamber of Commerce  
and Industry**  
ABN 37 650 959 904  
486 Albert Street  
East Melbourne  
Victoria 3002 Australia  
GPO Box 4352 Melbourne  
Victoria 3001 Australia  
Telephone: 03 8662 5333  
Facsimile: 03 8662 5462  
vecci@vecci.org.au  
www.vecci.org.au

8 August 2012

Dear VECCI Member

**Re: Fair Work Act Review**

You will recall that following consultation with many VECCI members, VECCI delivered a comprehensive [submission](#) and [supplementary submission](#) to the Fair Work Review based on member feedback and advice. The report from the Review panel in response has now been released but unfortunately it has missed the mark, failing to address major areas of concern for Victorian business, particularly small business. The report of the Review panel can be accessed [here](#).

The recommendations of the Review panel do not go far enough, nor do they include measures that would make a real difference for Victorian businesses feeling the impact of the changes introduced by the *Fair Work Act 2009* ("the Act"). Business will still have to contend with the higher labour costs and constraints on flexibility that the Act has imposed and remains shackled by unfair dismissal laws that force them to pay "go away" money to resolve unmeritorious claims.

VECCI's members' feedback had identified a number of priority areas for business that required immediate action, including:

1. Bargaining and Agreement making;
2. Problems associated with flexibility under the Act;
3. The unfair dismissal and general protections laws; and
4. An overall lack of certainty.

These were outlined in VECCI's submissions and dealt with by the Review panel as follows:

**Bargaining and Agreement Making**

VECCI made ten recommendations that would have addressed deficiencies in the Bargaining and Agreement making processes under the Act. While it is pleasing that four appear to have been endorsed, adopting only these will simply nullify some of the serious deficiencies that have emerged during the first two years of the operation of the Act. For instance, the Review panel accepted the submission of VECCI (and others) that industrial action should only be approved by Fair Work Australia after bargaining for an agreement has actually commenced.

It is disappointing that the Review panel did not endorse the recommendations in the balance of VECCI's submissions. By way of example, the Review panel advocates granting Fair Work Australia the power to arbitrate Greenfields Agreements rather than taking up VECCI's recommendation that Greenfields agreements should be able to commence and operate for 12 months where no agreement with the union can be reached.

### **Problems associated with flexibility under the Act**

The Review panel did not adopt VECCI's submissions that would have improved Individual Flexibility Agreements ("IFAs") apart from agreeing that it would be desirable to allow arrangements that would confer a non-monetary benefit on an employee. Unfortunately, what non-monetary benefits will be permissible and how they should be viewed and valued was not expressly defined by the Review panel, meaning uncertainty will continue plague IFAs.

### **The Unfair Dismissal and General Protections laws**

The Review Panel accepted VECCI recommendations that a broader range of issues relating to unfair dismissal applications should be dealt with administratively by Fair Work Australia to minimise the time and expense required to defend a claim. Similarly, an extension of Fair Work Australia's powers to award costs against people acting unreasonably in pursuing unfair dismissal cases has been recommended. Regrettably however, the Unfair Dismissal and new General Protections jurisdiction will otherwise be left intact meaning business will still be required to spend time and money defending claims and paying "go away" money, regardless of how unmeritorious the claims may be.

### **Overall lack of certainty**

The Review panel has largely adopted a "wait and see" approach in relation to the Act. Some glaring deficiencies have been addressed but adopting these will simply cure laws that were poorly drafted or went too far in the first place.

Overall, VECCI is disappointed that submissions it made to the Review panel that would have made a difference for business have not been fully embraced or, indeed, embraced at all. In particular, the substance of the new General Protections provisions will remain intact and some of the Review panel's recommendations will introduce further complexity, more procedural and red tape requirements and more third party interference into the employer-employee relationship by unions, regulators and Fair Work Australia.

The economic case for change remains compelling: Australia's productivity performance has slipped and jobs and investment growth are at risk. Deficiencies in the current legislation need to be addressed by the Federal Government as a priority and VECCI will continue to seek your views, raise issues that concern you and call for the necessary changes.

Yours sincerely



Mark Stone  
Chief Executive