

Jobs and Skills Summit – IR Summary

Last week's 2-day Jobs and Skills Summit provided a further, clear signal that the Albanese Government is fully committed to delivering for the Australian trade union movement on industrial relations. Whether this commitment will also, in practice, deliver the Albanese Government's stated objectives of 'a more productive workforce' and 'secure jobs with growing wages' is far less certain – particularly for small business operators and the 90% of private sector employees who have chosen not to be union members. Notably, the Summit's IR outcomes follow the Albanese Government's introduction of the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022* (see VACC Workplace Update [article](#)), which includes provisions sought by the ACTU that were previously rejected by the Fair Work Commission; as well as the public commitment to amend the current definition of casual employee in the *Fair Work Act 2009* (FW Act), despite that definition having been endorsed by the High Court of Australia last year in *WorkPac v Rossato*.

Strike action in pursuit of multi-employer 'pattern agreements' is not the solution

Enterprise bargaining reform was the centrepiece of the Summit from an industrial relations perspective, with the Albanese Government seemingly endorsing the ACTU's proposed 'solution' to redressing the historical low uptake in enterprise agreements by 'removing unnecessary limitations' on access to multi-employer enterprise agreements. Whilst further details will be released in a forthcoming White Paper, beneath the public relations spin, VACC is concerned that this will ultimately translate to amending the FW Act to make it lawful for unions to organise industry wide strike action against employers (including small businesses) to coerce them into signing onto multi-employer, union 'pattern agreements'. Members should note that such one-size-fits-all pattern agreements (also known as 'industry agreements') are historically notorious for delivering restrictive and inflexible work practices; unsustainable wages; and provisions that effectively force employees to become union members.

VACC is therefore adamantly opposed to such misguided policy, which if enacted, would serve only to reduce individual workplace flexibility and productivity, and inevitably lead to a reduction in the over-award market rates of pay received by employees in the automotive industry and/or layoffs. VACC notes that the Albanese Government has relied on a purported 'deal' reached prior to the Summit between the Council of Small Business Organisations Australia (COSBOA) and the ACTU, as demonstrating small business support for its intended reforms to multi-enterprise agreements. Whilst VACC is not a member of COSBOA and does not support its apparent industrially naive approach to the issue, it notes that COSBOA board members have since clarified that unions should have 'nothing to do with any deals' between small business employers and employees.

The Better Off Overall Test (BOOT) must be replaced

Whilst potentially providing a financial windfall for the trade union movement through increased membership numbers, the proposed approach also does nothing to address the elephant in the room – the sharp decline in enterprise bargaining that directly resulted from the introduction of the overly prescriptive and legalistic Better Off Overall Test (BOOT) by the former Rudd/Gillard Government under the FW Act in 2009, which the Fair Work Commission must apply in order to approve an enterprise agreement. The BOOT, coupled with the modern award simplification process, has made the current enterprise bargaining process both unworkable and arguably, redundant for the vast majority of businesses.

VACC therefore welcomes the Albanese Government's other major Summit IR commitment to make the BOOT 'simple, flexible and fair', which is understood to be based on the reforms previously proposed by the former Morrison Government. However, whilst a welcome start, addressing some of the more glaring administrative shortcomings of the current BOOT will do nothing to unlock the productivity improvements for small business employers and employees necessary to enable a material improvement on current arrangements. In the case of the automotive industry, this reflects a status quo of a modern award that provides special arrangements for particular industry sectors (e.g. vehicle sales and retail fuel) - supplemented by common law employment contracts (such as those drafted for members by VACC), enabling additional flexibilities and over-award wage rates, including incentive based payments.

Enterprise agreements must be genuinely 'win-win' to have a future

Meaningful reform to the enterprise agreement system requires replacement of the BOOT. This would enable employers and employees to freely enter into agreements capable of facilitating more mutually beneficial outcomes than are available currently. Without such genuine 'win-win' reform, it is hard to see enterprise agreements having a practical role to play in future for Australian small and medium sized businesses. One thing is for certain however, there is no legitimate role for a return to the dark days of union pattern bargaining and industry wide strike action.

A copy of the Australian Government's Jobs and Skills Summit Outcomes document can be accessed [here](#).

VACC will continue to keep members informed as it works with ACCI and other stakeholders to ensure that the interests of the automotive industry are represented during the legislative reform process. In the interim, members seeking further information or assistance are encouraged to contact the Workplace Relations team at ir@vacc.com.au or 03 9829 1123.

Daniel Hodges
Executive Manager – Workplace Relations
Industrial Relations | OHSE