

## WA Grower Magazine AUTUMN 2021

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Third party review required: Yes/No?

### Heading      Federal Governments IR Reforms – Key impact on Growers

#### Intro

In late 2020, the Morrison government outlined its Industrial Relations reform agenda identifying its legislative agenda for 2021. The vast majority of employers and employees are in the federal industrial relations system so the government's success or otherwise in achieving legislative change will have an affect on the majority of businesses.

The agenda prioritises 5 key areas of industrial relations reform being:

- Enterprise Bargaining
- Greenfields Agreements
- Defining Casual Employment and preventing double dipping
- Compliance and Enforcement
- Award Flexibility and Complexity

The last three areas have a direct impact on growers and their businesses and I will expand on them in this article.

#### Body

The government is intending to further target employers who are deliberately underpaying and avoiding their obligations under workplace law by dramatically increasing penalties and criminalising 'wage theft' committed by employers who deliberately underpay their employees. This position is very likely to be supported by the ALP opposition who have been calling for the criminalisation of systematic and deliberate underpayment of employee entitlements.

As a result, there will not be a better time for growers to look into their own employment practices and ensure that they are complying with their obligations under the legislation and Horticultural Award before this legislation is introduced.

A second area of reform that will make it easier for growers will be the government's stated intention to provide a legislative definition of a casual employee to address what was from the business community and government's point of view, the excesses of the *Skene* and *Rossato* federal court decisions as well as prevent the double dipping of employees deemed to have been incorrectly defined as casual workers accessing both the casual loading payments and the payment of leave entitlements. The ALP will likely support having a definition of casual employee but will not be

supportive of the government's proposed definition being the traditional 'paid and engaged as such'. The ALP and unions have publicly come out opposing the prohibition of employees double dipping.

The final area of reform that I will expand upon is the government's plan to simplify the modern award system. The prevailing view of most employers and business groups, particularly those representing small business is that the modern awards system is overly complex, inflexible and does not support the ever-evolving needs of the modern workplace.

The Minister for Industrial Relations, Christin Porter, in a speech to the Chamber of Commerce & Industry in September 2019 said,

*"The issue of award complexity in multiple classifications in 121 deferent awards is long standing and I am regularly told by employers - particularly small business owners - that fear of making a mistake is a major barrier to employment.*

*In our modern award system, the various classifications, loadings, breaks, rostering and other entitlements differ markedly across awards and present a complex picture.*

*For example, there are around 2,000 adult award rates of pay across the hundreds of different classifications.....*

*AND that is the observation of a large business – SMALL business will often need greater flexibility and have far less resources to navigate the intricacies of the system. AND that was true pre Covid and its certainly true mid Covid."\**

This one area of reform that is vehemently opposed by the ALP and unions to the point where the ACTU has launched an advertising campaign targeting key marginal seats in eastern Australia opposing these reforms.

This is an area of reform that growers should embrace and support. Simplifying the inflexibility and complexity of the Horticultural Award, particularly in our industry where the vast majority of employers are small employers without access to internal human resources capability, will allow growers to focus on production within their business, creating opportunity for employment that provides workers with economically viable and sustainable wage growth and conditions.

### Conclusion

It remains to be seen how successful the government will be in pursuing its IR Agenda, particularly where much of It is opposed by the ALP and unions. The government will need the support of the minority cross benchers in the Senate to pass its reform, which will involve a significant amount of negotiating and potentially dilution of the government's goals. One thing that is for certain will be the consequences of success and failure. Win on this agenda will enable the government to campaign from a strong position in the next election campaign. Lose and its re-election hopes at the next election will result in a significantly downward impact.

### **More information**

*Please include any contact details eg. Contact name, email, website, phone number*

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## References

<https://www.attorneygeneral.gov.au/media/speeches/future-australian-workplaces-29-september-2020> Accessed January 31 2021

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