

“AUSTRALIA’S WORKPLACE RELATIONS IS BROKEN, OLD-FASHIONED AND UNFIT FOR PURPOSE”

Australia’s workplace relations system is broken - it is not optimally serving the interests of employees, employers, the public or our national economy.

The rail dispute in Sydney this week is an example of just one small part of the broader problem with a system that is no longer fit for purpose.

Harmers Workplace Lawyers initiated the legal case on Tuesday afternoon to stop the industrial action as we were concerned that no one else had, and time was running out. The Government joined in on Wednesday.

We, at Harmers Workplace Lawyers, took this legal action because we believe the industrial action by the unions was not in the public interest and was excessive. The community should not be exposed to enormous disruption and economic loss simply because two warring parties cannot agree.

Harmers Workplace Lawyers had legal standing in this dispute as, under the legislation, it was heavily impacted by the industrial action. More than 50% of our staff rely on trains to get to work. There would have been a considerable loss of revenue, cash flow and productivity to the firm if the strike went ahead.

We were justifiably concerned for the impact on many commuters and that many businesses across the State would be similarly affected to ours. We also genuinely apprehended that the industrial action was not legally protected, and that even the overtime bans would expose rail employees and their unions to class action style litigation for tens of millions of dollars. As concerned citizens we felt it incumbent upon us to attempt to stop all of those outcomes.

Rail unions and their members had been provoked by their employer and had legitimate bargaining issues to pursue. The only effective bargaining leverage the current system gave them was to threaten – and take – disruptive industrial action.

The implementation of overtime bans and the threat of a whole-day strike achieved its intended aim of prompting a better offer from the NSW Government. But the overtime ban caused misery for hundreds of thousands of Sydneysiders on Thursday. Monday’s strike would have caused too much harm to innocent bystanders and the economy. So the only option left was to seek legal orders stopping the industrial action.

An enterprise bargaining system reliant on such industrial action leverage is old-fashioned and inefficient.

Millions of workers do not have any such leverage - they have bills to pay, families to feed and sky-rocketing expenses. They resolve their disputes directly with their

employers without having the ability to disrupt the lives of millions. So, effective leverage is missing for employees at either end of the spectrum. Employers also crave a fair go in a system which lacks adequate flexibility.

There is a need for a reformed system which respects workplace rights, and the need for flexibility for workers, business and the public. That system should be built totally on the Australian notion of the fair go all round.

Such a system should redress the imbalance between employees and employers via an improved system of good faith bargaining, conciliation and fair-go-all-round arbitration - without flow on abuses and the excesses of the past.

We currently have totally different modes of legislation to address each of workplace relations, human rights and workplace health and safety - these should be streamlined into one integrated system.

We need to breathe new life into employee and employer representation - for without it access to justice in our country is an expensive farce.

The major political parties have got to stop playing politically-expedient football with the system - kicking partisan, outmoded models back and forth across the political spectrum.

There is a need for genuine national consultation on a middle path for our workplace relations system - which is currently in a politically frozen abyss.

That new system should provide a principled mooring respecting the rights and responsibilities of workers, business and the public interest and should not be built on political expediency.

I write these comments as we celebrate the Australia Day weekend as part of a genuine call for reform, and in an entirely personal capacity.

Michael Harmer
Harmers Workplace Lawyers