

Small business ombudsman urges leniency on respect...

By ROSIE LEWIS

The Australian

Tuesday 18th October 2022

478 words

Page 4 | Section: THE NATION

195cm on the page



Small business ombudsman urges leniency on respect law

EXCLUSIVE

ROSIE LEWIS

POLITICAL CORRESPONDENT

The Albanese government is being warned against punishing small businesses too harshly for failing to comply with a proposed law that puts the onus on employers to eliminate sexual discrimination and harassment in the workplace “as far as possible”.

The new obligation is a key measure of the government’s Respect At Work Bill, which would implement seven of the outstanding recommendations in Sex Discrimination Commissioner Kate Jenkins’ landmark report of the same name.

The Australian Small Business and Family Enterprise Ombudsman said the positive duty “may add to the complexity and regulatory burden” that already existed and cautioned that most small businesses did not have the resources to manage the change.

The Ombudsman called for education rather than punitive measures, as a parliamentary committee scrutinises the bill, with a report due by November 3.

“The bill provides that the

(Australian Human Rights) Commission should ensure compliance with the positive duty in relation to sex discrimination. We recommend the commission consider factors including lack of previous offences and the time a business has been operating when undertaking compliance activity,” the Ombudsman’s submission states.

“The commission could, for example, consider that where an unintentional error is made by a newly operational small business, that business be provided with targeted education rather than be subject to punitive measures. Despite best intentions, small businesses do not have the resources of their larger counterparts to manage complex and changing regulatory environments and as such, initial compliance activity should focus on education.”

The AHRC would be able to give compliance notices to employers who are not meeting their positive duty obligations.

The Australian Chamber of Commerce and Industry wants the legislation amended so that it’s made clear an employer’s obligations under work health and safety law may not satisfy their obligations under the proposed

positive duty. The chamber also called on the government to clarify what conduct the positive duty could cover, amid concerns it set a greater compliance threshold than existing WHS law that ensures the health and safety of workers “as far as is reasonably practicable”.

“The new phrase (in the Respect At Work Bill) ‘as far as possible’ does not share such clarity. What is possible may not be reasonably practicable,” ACCI’s submission states.

“It may be possible for employers to introduce a variety of severe measures that make sexual harassment and sex discrimination less likely but come at a significant and impracticable cost (both financially and operationally) to the business.”

Australian Retailers Association chief executive Paul Zahra said smaller retailers were already struggling to resource day-to-day operational needs and would require support resources on what was expected of them under the change. “While many of our larger members are already discharging this positive duty voluntarily, small and medium-sized businesses will require some support,” he said.