



Phase 1: Review of the literature

THEME 5: Empowering Entrepreneurs



Australian
Chamber of Commerce
and Industry

Working for Our Future: Modernising Workplace Relations in Australia

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Note:

This report has been prepared by SEAANZ for the Australian Chamber of Commerce and Industry (ACCI) and the Department of Employment. The report presents a review of the literature and is not a policy document. It presents a broad analysis of the specific research questions addressed by this study.

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EXECUTIVE SUMMARY

This report presents the results of the first of a multi-stage project commissioned by the Australian Chamber titled 'Working for Our Future: Modernising Workplace Relations in Australia' with funding from the federal Department of Employment. This first stage provides a review of the literature relating to five specific themes and the research questions associated with them that were identified by the Australian Chamber as vital to a vibrant and inclusive workplace relations system in Australia. The current report addresses *Theme 5: Empowering Entrepreneurs* and draws on more than 160 sources including academic research papers and selected "grey" literature from government and industry over the time period 1980 to 2016.

Key Findings

Small to medium enterprises (SMEs), in particular entrepreneurial high growth potential firms, comprise the majority of all businesses in Australia. They are also a potential source of job creation and innovation. How workplace relations (WR) and the laws and regulations associated with that impact such firms is therefore of importance. The findings from our review of the literature suggest that the impact of WR laws and regulations is mixed with many firms not experiencing significant problems. While there is evidence that compliance costs are a potential impediment for some firms, most SMEs make use of industrial awards and do not find regulations a major impediment to hiring. However, the small proportion of SMEs that are engaged in high-growth activities may experience problems with workplace regulations as they need skilled employees. Key areas of legislation and regulation likely to impact these firms are working visas, immigration policy and occupational licensing. More research is needed in this area.

Take away 1: Workplace laws and regulations impact unevenly across SMEs due to their size, industry and level of informality. It is likely that high growth firms may be more impacted by WR than their low growth counterparts, however, additional research is needed to fully understand this relationship.

Most SMEs and family owned firms have a largely informal approach to human resources management (HRM). Only in areas such as work health and safety (WHS), where regulation is strong, do such firms adopt formal procedures. However, as firms get larger and more complex the level of formality in HRM processes increases. Further research is needed in this area with attention given to the impact of WR laws and regulations on firms across size, lifecycle stage, industry and rate of growth.

The majority of SMEs do not use formal or systematic HRM policies and practices. However, there is evidence that good HRM practices have a positive influence over SME performance and that larger firms and those seeking growth are likely to adopt these practices. More research is required into the factors likely to influence the adoption of HRM "best practice", what such practice should involve, and how it might impact on different types of firms. In relation to "best practice" principles for the design of government regulations, the review suggests that attention needs to be given to industry level research as well as examining the way firms are behaving in response to such regulation; with reference to industry sector, organisational configuration, management characteristics, performance and growth over time.

Take away 2: *There is some evidence that the use of innovative HRM policies and practices can have a positive influence on SMEs seeking to grow as well as on productivity of such firms. However, most SMEs do not have formal HRM systems and these only usually emerge when the firm reaches a certain size. More research is needed into the relationship between HRM “best practice” policies and successful growth and productivity in SMEs. The influences of industry sector, organisational structure, management skills and level of growth should be considered.*

INTRODUCTION

This report, is one of a series produced by the Small Enterprise Association of Australia and New Zealand Ltd (SEAANZ) for the Australian Chamber of Commerce and Industry (Australian Chamber) and the Australian Department of Employment as part of a larger study “*Working for Our Future: Modernising Workplace Relations in Australia Study*”.

SEAANZ is examining five out of a total of seven themes within the larger study and this report examines the background literature relating to Theme 5 ‘Empowering Entrepreneurs’. It has examined the literature relating to the impact of regulatory frameworks on the behaviour and productivity levels of SMEs, start-ups, early-stage and family owned firms. This first phase of the research study provides a series of focused reviews of the literature with this report being dedicated to the theme of workplace regulation.

The methodology followed

The review of the literature presented here drew on over 160 sources. The initial selection of papers for review were guided by a set of research questions provided by the Australian Chamber, derived from preliminary research undertaken by the University of Queensland (Gollan & Steele, 2015).

The approach taken to this literature review drew on a systematic approach recommended by academic sources (e.g. Webster & Watson, 2002; Ridley, 2008; Fink, 2010; Denney & Tewksbury, 2013). It commenced with a definition of key terms, in particular the classification of SMEs, which is a major area of focus for the study. An examination of online bibliographic databases was then undertaken with search parameters guided by the key words. The Endnote bibliographic database was used to store these documents which included both peer reviewed academic research papers and quality “grey” literature from mostly government and industry sources.

These sources were then examined using Leximancer text analytic software that uses algorithms to identify word frequency and co-occurrence counts to group words into concepts (Smith & Humphreys, 2006). These concepts are then graphically mapped to show their concentration and interrelationships within the wide corpus of text contained within the source documents. These are also grouped into themes to show the overall structure of the literature. This provided an initial foundation for the examination of the literature sources and assisted in helping to revise the initial research questions. The data used in the analysis included details of the author, title, abstract, journal of the material manually reviewed.

In addition to the Leximancer analysis NVivo a qualitative data analysis (QDA) computer software that enables the management and analysis of large quantities of rich text-based and/or multimedia

information, where deep levels of analysis on small or large volumes of data are required (QSR, 2016). This analysis followed the process recommended by di Gregorio (2000). As a more manual analysis tool than Leximancer, NVivo offered a means of independently examining and coding the source data.

Finally, the literature was examined using a manual thematic analysis involving a review of each document. This was subsequently incorporated into the final report. Using both computer-aided and then manual analysis means enabled the confirmation of patterns identified in one method with those found in the other two and minimised the potential for researcher bias. The multiple perspectives provided from these three methods of manual and computer aided analysis provide a robust basis for further refinement of the research questions which were then used to guide the overall study. Further details on the methodology can be found in McKeown *et al.* (2016).

The structure of the report

The first section presents an overview of literature that is relevant to the four research questions. It summarises the key findings from the Leximancer and NVivo analysis that was used to get an understanding of the overall shape and structure of the literature. The next section examines the Australian workplace legislative and regulatory (WR) system in context with a short historical overview of the evolution of this system since Federation in 1901. It then examines the more recent issues of public policy relating to the WR system, in particular the *WorkChoices* framework introduced by the Liberal National Party (LNP) coalition government of Prime Minister John Howard, and *FairWork* system that replaced it during the period of the Australian Labor Party (ALP) governments of Prime Ministers Kevin Rudd and Julia Gillard. Particular attention is given to the role played by unfair dismissal laws in the WR system and its impact on SMEs.

In the next section attention is given to the management of employees in small firms and the likely impact of WR systems on this. The role of internal and external drivers of HRM practice in small firms is also examined with reference to specific areas such as recruitment and selection, wages and conditions, workplace flexibility and work health and safety (WHS) as it impacts on SMEs. Consideration is also given to training and development, grievance, discipline and dismissal

This is followed by a review of the nature of job creation within SMEs, in particular the start-up sector and high-growth firms known as “Gazelles”. Issues associated with the ease of starting up a new business in Australia and government policy prescriptions for stimulating job growth and productivity are also examined along with a discussion over the role that regulatory frameworks play in SME productivity. In the final section the findings from the literature review are summarised and conclusion and recommendations for future research are made.

Limitations

In approaching the methodology, we have been guided by best practice principles using software analysis tools (e.g. Leximancer, NVivo), and distributing the coding and analysis findings across several chief investigators who have independently assessed the results. Discussions in relation to the refining of the initial research questions were also held with our industry partner ACCI and other senior academics within the SEANZ community to review the work in progress before the finalisation of this document.

However, it should be noted that while 146 sources were examined for this literature review we do not claim this to be a full review of all available literature. Given the complex and interdisciplinary nature of the study it was not possible, for reasons of time, to examine every source that may be relevant to this

theme. In selecting documents, we have deliberately focused on publications generated within the past decades and given priority to more recently published works. Some readers may identify missing sources or disagree with our conclusions. We welcome any feedback in this regard as part of the process of developing this study.

EXAMINING THE RESEARCH QUESTIONS

This section examines the research questions specific to this theme and provides a summary of the initial findings from the Leximancer and NVivo analysis. The specific research questions guiding this literature review were:

Research Question 1: *How do workplace relations (WR) laws and regulations influence the behaviour of start-up and early stage firms in relation to their decision to employ?*

Research Question 2: *How do WR laws and regulations influence the behaviour of SMEs and family owned firms in their management of employees?*

Research Question 3: *How does innovation and pursuit of best practice benchmarking in human resource management (HRM) influence the performance of SMEs?*

Research Question 4: *What WR regulatory frameworks might influence SME productivity levels?*

Summary of Leximancer and NVivo results

The use of both Leximancer and NVivo analysis to undertake an initial review of the literature provided a more robust overview of the sources and how they mapped into themes associated with the research questions. This combination of visual and textual interpretation allowed concepts to be viewed in different ways, thereby improving the reader's interpretation. Comparing the results from the two separate analyses enabled the review to confirm findings, or raise new issues that were not apparent from a single form of analysis. The results suggested a need to revise the initial research questions developed by Gollan and Steele (2015).

Comparing the two analyses enabled a review to confirm findings, or raise new issues that were not apparent just from one form of analysis. They provided indications as to the areas of refinement to the research questions. How the workplace relations (WR) laws and workplace regulations influence the decision by start-up and early-stage firms to employ remains an important area within the literature relating to entrepreneurs and SMEs.

The Leximancer analysis identified the importance placed within the literature on the issue of resources within SMEs, which typically face scarcity in areas such as human resources, financing, and access to technology. Also highlighted was the need for such firms to use networks to help them access these resources. For small, innovative and entrepreneurial start-up or early-stage firms the need for investment capital is often crucial. In fact, the ability of an SME to grow and therefore employ more people is contingent on its capacity to accumulate resources over time and then learn to utilize these resources in the most cost-effective manner (Macpherson, 2005; ESDE, 2016).

Technology is also important from a resource perspective as it either helps the small business owner or entrepreneur to increase their productivity, or in the case of high-growth firms, it may be the key to their future growth (Hoffman *et al.*, 1998; ESDE, 2016). For small firms that lack the necessary resources to achieve growth alone, there will be a need for the owner-manager or entrepreneur to secure access to resources through networks (Ostgaard & Birley, 1994; Donckels & Lambrecht, 1997;

Havenes & Senneseth, 2001). This is particularly important in terms of the ability of small business owners and entrepreneurs to build social capital as well as economic capital as this helps them to leverage interpersonal connections for accessing resources (Cooke & Wills, 1999).

There was also congruence between the findings from the Leximancer analysis and that of the NVivo analysis. This related to the engagement by entrepreneurial individuals in using innovation in their employment of human resources (HR) to get the most productivity they can from the resources they have available. This nexus between human capital and innovation is recognised in the literature with evidence that “innovative human capital” is more valuable to small firms (e.g. those with fewer than 50 employees) than their larger counterparts (McGuirk, Lenihan & Hart, 2015). Unfortunately, the amount of academic research into how HRM is undertaken within SMEs was relatively modest for many years (Wilkinson, 1999; Heneman, Tansky & Camp, 2000). However, this has been addressed to some extent in the past decade and a half following attention to this aspect of small business management by several leading academic journals (Katz *et al.*, 2000).

Perhaps not surprisingly how the small business owner or the entrepreneur undertake their human resource management (HRM) tasks depends on the size of the firm as well as the characteristics of the owner-manager or entrepreneur (Ojokuku, 2012). Micro and small firms, with fewer resources and an often-overworked owner-manager, tend to have less formal systems and rely upon the owner-manager or entrepreneur to maintain control via direct supervision (Kotey & Sheridan, 2004). There also appears to be a nexus between the experience and knowledge of the firm’s owner-manager and the ability of the business to develop high-performing work teams with employees who have the necessary skills and technical know-how to support corporate growth strategies (Kerr & McDougall, 1999; Georgiadis & Pitelis, 2012).

Relationships between formal WR laws, workplace regulation and the performance of SMEs that were highlighted in both the Leximancer and NVivo analysis as associated with the first and second research questions. Studies dating back to the 1980s suggest that trade union activity in SMEs is generally very low, with a high degree of informality. WR disputes typically involved discipline or dismissal, and owner-managers use centrally negotiated awards for determining wages and conditions. While industrial action within SMEs is generally rare, owner-managers typically resist anything that impinges on their management prerogative (Gunningle & Brady, 1984; Savery & Mazzarol, 2001).

The introduction of workplace legislation (e.g. unfair dismissal laws) is usually viewed with suspicion and a sense of unfairness by SME owner-managers. However, they may not rate such laws as being critical to their decision to hire employees, which is more likely to be determined by the level of business activity taking place within the firm (Robbins and Voll, 2005). Further, the impact of WR laws such as unfair dismissal is likely to impact more on the micro-firms than the larger and more established small to medium enterprises. This is because it is the very small firms that will benefit most from the alleviation of any regulatory compliance and this is likely to translate into more employment within such firms (Wooden, 2005).

AUSTRALIAN WR LAWS AND REGULATIONS IN CONTEXT

Any consideration of the impact of Australian WR laws and regulations on employment by small firms and start-ups must be undertaken with reference to the political and statutory environment in which they operate. The emergence of the current WR laws and workplace relations system has its antecedents in the years leading up to the federation of Australia in 1901. The social and economic disruption caused by the Great Strikes of the 1890s laid the foundations for the creation of the *Conciliation and Arbitration Act 1904* (McCallum & Smith, 1986). This legislation provided the basis of Australia’s federal WR

system throughout the first half of the 20th Century (Lambropoulous, 2013). Its principles were based on conciliation, arbitration and the setting of wages and conditions via industrial Awards.

The federal Labor government of Prime Minister Ben Chifley amended the Act in 1947 with new legislation for dealing with industrial disputes. Further changes were made under the Liberal Country Party coalition government of Prime Minister Sir Robert Menzies in 1956, with more amendments during 1977 under the Liberal National Party (LNP) coalition government of Prime Minister Malcolm Fraser. Yet the biggest reforms occurred during the tenure of the Labor government of Prime Minister Bob Hawke, with the introduction of the *Industrial Relations Act 1988*. This was followed in 1993 during the period of Labor Prime Minister Paul Keating with the *Industrial Relations Reform Act 1993*, which sought to decentralise the system and allow employers to negotiate at the enterprise level (Lambropoulous, 2013).

The introduction of Australian Workplace Agreements (AWA) was designed to make the negotiation of wages and conditions more flexible and equitable for employers and employees. Roan *et al.* (2001) conducted a study of 539 AWAs in the late 1990s finding that employers had integrated both “hard” and “soft” dimensions into their agreements to help enhance their firm’s profitability, but also to give employees more flexibility. Hard issues were associated with wages and hours. By contrast “soft” issues dealt with things like dispute resolution, sick leave, parental and compassionate leave, WHS, flexi-time, training and career path development. However, although the concept of individual agreements through AWAs was intended to provide more flexibility and better outcomes to both employer and employee, this was not found to be the case. As the study concluded:

“The Business Council of Australia (BCA) has argued that in a deregulated labour market, without ‘obstacles’ such as awards and trade unions, employers and employees will be able to reach agreements that meet the needs of both parties. AWAs give employers the opportunity to forge such agreements (subject to certain minimum restrictions such as the ‘no disadvantage’ test and the need to abide by the basic laws of employment), and can therefore be interpreted as the closest indicator of a ‘pure’ employer agenda towards employees in a deregulated labour market of the type that the BCA has long advocated. Our findings, which weight each employer equally, suggest that the tendency for employers, free from the ‘fettters’ of trade union/ ‘third party’ intervention and the potential for public investigation, is not to seek out agreements that benefit the interests of both industrial parties.” (Roan *et al.*, 2001)

In 1996 the election of an LNP coalition government led by Prime Minister John Howard saw a further major shake-up of the WR laws. The *Workplace Relations Act 1996* was aimed at overhauling what was viewed as an inflexible system that did not provide employers and employees with sufficient choice. Unionisation of the Australian workforce, which had peaked at 61 per cent in the early 1970s during the time of Labor Prime Minister Gough Whitlam, declined significantly by the first decade of the current century to around 22.4 per cent in 2005 (Lambropoulous, 2013). This was a global trend and reflected changing workplace conditions and shifts in the underlying structure of world economies.

WorkChoices and FairWork

The *Workplace Relations Amendment (WorkChoices) Act 2005* was the final major WR legislation introduced by the Howard LNP government. It removed the long-standing tradition of conciliation and arbitration, dismantled the award-making system and replaced them with five minimum statutory entitlements relating to pay and conditions. It saw the loss of many worker entitlements, the removal of unfair dismissal protections and impacted entitlements such as long-service leave and redundancy payouts. This legislation essentially placed the power in the hands of the employers (Lambropoulous, 2013).

A review of the impact of *WorkChoices* on SMEs was undertaken by Lyons *et al.* (2007) using data from the BLD and Australian Workplace Industrial Relations Survey (AWIRS) plus a survey of small business

owners in Sydney. This found that despite claims by government and industry associations that the WR laws and regulations were an impediment to small firms most owner-managers were content with the system. Most made use of the awards (both state and federal) to help them decide on pay and conditions, which they found easier to do than individual negotiations. The majority of small business owners found no major problems with the legislation and were more concerned over taxation compliance such as the collection and reporting of GST. As the study concluded:

“This lack of evidence from SME employers to support the federal government’s policy agenda implies that it is driven more by ideology rather than the needs and concerns of management in SMEs. Indeed, the federal government has acknowledged it failed to conduct any research into the need for the changes made by the NWRS before its introduction.” (Lyons et al., 2007 p. 47)

The re-election of a Labor government under Prime Minister Kevin Rudd in 2007 led to the replacement of *WorkChoices*, which both Labor and the trade union movement had vigorously opposed. It was replaced in 2009 by the *FairWork Act 2009* that reinstated collective agreements at the workplace level and replaced the AIRC with a new body Fair Work Australia, renamed as the Fair Work Commission (FWC).

For SMEs, the current legislation has been seen as having a number of positives. According to an assessment by Dunphy and Ronzembergs (2008) these included the introduction of a “simpler and more modern” industrial award system. This was seen as helping small business owners by making industrial awards easier to understand and apply, but with no additional costs to the employer. It also suggested that the legislation would provide more flexibility to both employers and employees when undertaking negotiations:

“The amendments could provide employers and employees with more flexibility in agreement making, as passing the relevant test will not necessarily require a focus on just the amounts payable in respect of allowances, penalties and the like.” (Dunphy & Ronzembergs, 2008 p. 234)

The majority of Australian SME owner-managers have traditionally used state and federal awards to determine pay and conditions (Lyons et al., 2007). However, many small business owners have difficulty understanding the awards system, although this did not appear to inhibit flexibility within the workplace (Farmakis-Gamboni et al., 2012).

There is a lack of reliable data for the analysis of how small businesses deal with their employees, which is compounded by a paucity of clear definition as to what a “small business” is. Research undertaken by Fair Work Australia found that there is a lack of research dealing with how SMEs in Australia engage with the WR system (Farmakis-Gamboni et al., 2012). However, the study found that small firms make much greater use of industrial awards than larger firms when setting rates of pay and conditions. This is a pattern similar to that found in the United Kingdom (Gunnigle & Brady, 1984; Matlay, 1999).

The Fair Work study identified what the authors described as “the award reliant small business”. Such firms were estimated to comprise around 12.9 per cent of all small employing firms. These firms were found to have lower productivity and profitability than firms that made use of a combination of awards and non-award systems. However, there is no evidence of a correlation between the reliance on awards and business performance. In general, employees of award reliant small firms were no different to those found in other firms, yet they were more likely to receive lower hourly rates of pay, and have higher rates of casualization and turnover (Farmakis-Gamboni et al., 2012).

At time of writing there were 122 industry and occupation awards that provide the minimum wages and conditions for employees within specific industry sectors and occupations. The “modern awards” introduced under the *FairWork Act 2009* replaced a number of pre-existing awards and the transition took place between 1 July 2010 and 1 July 2014 (FairWork, 2016). For firms that don’t wish to rely on

awards they can negotiate enterprise agreements covering pay and conditions that take place between employers and employees within a single business, or a group of businesses. Where they are negotiated, they replace awards, although minimum National Employment Standards still apply (FairWork, 2016).

Unfair dismissal laws

The introduction of *Unfair Dismissal Law* in 1993 is another area that has received a good deal of discussion in the literature in relation to its impact on small firms (Bryson & Howard, 2008). Under current legislation the unfair dismissal laws are different for firms with fewer than 15 employees excluding claims where the individual has been employed for less than 12 months, and where the employer has followed a “Small Business Fair Dismissal Code” (FairWork, 2011).

Despite heated political debates over unfair dismissal’s likely influence on small business employment there has been little hard evidence that it had anything more than a modest 0.5 per cent impact on job growth (Harding, 2002). According to Wooden (2005a) the decision to exempt firms employing up to 100 people from the unfair dismissal laws during the period of the Howard LNP government, was unlikely to impact on all but the smallest of firms and that such laws would “reduce both new hires and fires” (p.15). However, Harding (2002) did find that unfair dismissal laws were likely to have an impact on both equity and efficiency in the workplace, with potentially detrimental effects on younger and more marginalised workers (e.g. those with long term unemployment or lower skilled and educated).

Around the same time a survey of 594 Australian small business owners undertaken by Robbins and Voll (2005), found that the majority were aware of unfair dismissal laws and 40 per cent reported having policies and procedures in place to deal with the dismissal of employees. However, very few had experienced unfair dismissal claims with only 2.9 per cent of respondents reporting having had a claim lodged against them in the previous 5 years. This suggested that for the majority of small business operators the issue was not a significant or burdensome problem. Also of interest was the study found that the most important factors influencing their decision to hire or not hire additional staff was not the unfair dismissal law (only 5.5% indicated this), or “legislation” (only 3.4% indicated this), but their own personal workload and sales turnover (48.6% indicated this), followed in second place by the cost of the new employee (14.9%). As the authors of the study concluded:

“The disparity between the results of this survey and the claims of the government does more than raise a cautionary tale of emphasis or interpretation. It highlights the explicit political or ideological nature of industrial relations and the reform agendas of all federal governments in the past two decades. There may very well be many good political reasons for industrial relations and small business reforms but in the case of unfair dismissal laws there is still no clear pragmatic justification for changing the current practice.” (Robbins & Voll, 2005 p. 86)

In a review of the unfair dismissal laws and their impact on small business employment Bryson and Howard (2008) found little evidence to suggest that these laws were serving as a major impediment to small firms hiring employees. They also undertook case studies of nine small business owners in regional NSW and found that:

“Overall, the unfair dismissal exemption is not expected to add new jobs to the businesses of the respondents to this study.” (Bryson & Howard, 2008 p. 103)

This view that Unfair Dismissal Laws, despite the political arguments used to promote their allegedly negative impact on small business employment, were not really having much of an effect was highlighted by the Federal Court. In the case of *Hamzy v Tricon International Restaurants trading as KFC (2001) 111 IR 198* a 15 year old boy Omar Hamzy was employed by KFC for eight months before

he was fired. He sought redress via the Australian Industrial Relations Commission (AIRC) and the Unfair Dismissal Law was reviewed. The case was taken to a full Federal Court hearing with the involvement of the federal Minister for Employment. In its deliberations, the Court found that the arguments put forth from the Minister and others that the application of unfair dismissal laws in relation to casual employees would have serious negative impacts on employment “lacked a proper factual foundation and must be rejected” (Dowling & Howe, 2002). This decision subsequently led to revisions in the Act.

THE MANAGEMENT OF EMPLOYEES IN SMALL FIRMS

For the majority of small and family owned businesses the management environment is informal in nature with the owner-manager(s) forming the centre of a tight circle around which their employees cluster (Hankinson *et al.*, 1997; Hankinson, 2000). Only when the business grows beyond a certain size (approx. 20 people) does a “divisionalised” and hierarchical structure emerge (Wilkinson, 1999). Human resources management (HRM) systems within small firms typically encompass employee recruitment and selection, setting of pay and conditions, training, supervision, evaluation, discipline and dismissal (Ceranic & Popovic, 2009; Ojokuku, 2012). Industrial relations and HRM systems within the majority of SMEs are also informal with little trade union presence and owner-managers generally considering the involving of a union by employees as disloyalty (Gunningle & Brady, 1984). In making decisions over pay and conditions, discipline or dismissal, most small business owners rely on industrial awards rather than seeking to negotiate directly with employees (Lattimore *et al.*, 1998; Savery & Mazzarol, 2001).

At the end of the last century Wilkinson (1999) noted that relatively little attention has been given to HRM management in small firms, suggesting that the literature had characterised it as a dichotomy between “small is beautiful” or “bleak house”. The first comprises “close and harmonious working relationships” between the owner-manager and his or her team, while the second is a dictatorship in which employees suffer poor working conditions. A decade later Battisti and Deakins (2010) reported that the interrelationship between WR laws and HRM practices in SMEs had still not attracted much attention from academic researchers. However, there is evidence that Australian SMEs have increasingly adopted more formal HRM systems over the past decade and have more of a “small is beautiful” scenario than they do a “bleak house” one (Wiesner & Innes, 2010). Nevertheless, the general pattern of employee relations remains the same, with micro and small firms characterised by informality and a personalised management environment (Srimannarayana, 2006), and formality emerging as the business grows (Kotey & Slade, 2005).

Internal and external drivers of HRM practice in small firms

Research undertaken in the United States (USA) suggests that many small business owners lack knowledge relating to WR laws and regulations and their relationship with human resources management (HRM) issues (Massey & Campbell, 2013). Similar findings emerge from studies undertaken in the United Kingdom (UK) suggesting that owner-managers, in particular from micro-businesses, adopt largely informal approaches to pay bargaining, training and even grievance procedures when dealing with employees (Matlay, 1999). The main areas where such laws and regulations are likely to have the most impact are in relation to the setting of wages and conditions, workplace flexibility, provision of training and the management of employees in relation to grievance, discipline and dismissal.

Bacon and Hoque (2005) conducted a review of the literature and an analysis of large scale employee relations survey data from the UK. They found a range of internal and external factors likely to influence

the level of formality in the HRM systems of SMEs. Internal factors likely to influence the adoption of more formal HRM practices are the level of skills found within the firm's workforce, with more innovative firms likely to have higher skilled employees. Commensurate with this is the level of professional management education that the owner-manager(s) may have had. Of these the most influential was the skills mix of the workforce. Firms employing low skilled workers were less likely to adopt HRM practices than their counterparts with high skilled employees.

Key external influencing factors are the firm's corporate governance and proprietary control, with formal boards and outsider directors often leading to more sophisticated management practices being adopted. However, for family owned firms the opposite is usually the case. Here the management style is often "negotiated paternalism" (Ram and Holliday, 1993). Other influencers were employer associations, trade unions and customer or suppliers. Of these the strongest influences were from trade unions and major customers. Trade Unions were likely to trigger the adoption within SMEs of specific procedures associated with wages and conditions, induction, grievance and disciplinary management. Customers were likely to encourage training (e.g. WHS and occupational certification) (Bacon & Hoque, 2005).

Recruitment and selection in SMEs

The available literature suggests that the process of recruitment and selection in small firms is more informal than occurs in larger companies (Carroll *et al.* 1999; Bacon & Hoque, 2005; De Kok *et al.*, 2006). SMEs seek to hire when they are growing and growth oriented owner-managers have been found to increase the formality and sophistication of their recruitment and selection procedures the larger they get (Kotey & Sheridan, 2004). When the firm is very small the owner-manager is generally able to recruit from a pool of close contacts they can source largely via informal channels such as word of mouth (Carroll *et al.*, 1999). However, once the firm grows in size this informal network becomes less able to support the demand for personnel and more formal channels are needed (Barber *et al.*, 1999; Kotey & Sheridan, 2004).

The processes used for screening and selection also become more sophisticated as the firm grows in size (Kotey & Slade, 2005). Many owner-managers (88%) use line managers and other employees to assist with selection processes, and unstructured interviews are generally the most common (62%) of methods, with medium sized firms making more use of psychometric testing and outside consultants (16% to 50%) (Wiesner & Innes, 2010).

It is difficult to obtain reliable information on how WR laws and regulations impact on the decision by small business owners to employ, particularly in Australia. In the European Union (EU) the administrative burdens associated with WR laws and regulations have been identified as having a negative impact on recruitment and selection of employees by some SMEs, with around 31 per cent of owner-managers indicating that that they found employment legislation overly complex and obscure (EC, 2002). A similar picture emerges in the UK where about 51 per cent of small business owner-managers viewed regulatory compliance costs were a burden on recruitment of employees (Small Business Service, 2001). Family firms, particularly smaller ones, are likely to rely on family members for their employees and this is often informal in nature (De Kok *et al.*, 2006). As noted by Wooden (2005b):

"For many owner-managers of small businesses hiring and firing decisions are no small matter. They do not have specialists who are trained in recruitment and selection, their businesses are not large enough to retain employees on their books who do not contribute to a healthy bottom-line, and they often do not have enough time to be regularly monitoring and supervising workers. Indeed, for many small businesses there are good reasons to employ no one, which possibly helps explain why many businesses do just that...And many others only employ family members and close friends, staying away from people they do not know and who may be costly and difficult to retrench." (p. 177)

Wages and conditions in SMEs

Farmakis-Gamboni *et al.* (2012) found that small “award reliant” firms paid their employees on average less than did larger firms, and that employees working for small – in particular award reliant – firms were more likely to be casual, part-time, female and less likely to have access to parental leave, home-based work and flexible start and finish times. This is pattern of setting wages and conditions found in other literature (Weisner & Innes, 2010).

An analysis of HRM practices in Australian SMEs undertaken by Wiesner and Innes (2010) using large scale survey data found that most firms (90%) made use of “market competitive wages” and use of awards (85%) being amongst the most common. However, a high proportion (87%) reported using performance-based pay with skills (87.7%) factored in as a justification for higher wages. There was also a high reported use of individual merit pay (76.2%) and the use of job evaluation to set pay levels (82.8%). Overall the findings suggested that wages and conditions were less likely to differ by firm size or even the presence within the firm of a dedicated HRM manager or function.

Flexibility in the SME workplace

Managing flexibility in the workplace is one area emerging within the literature that can impact on small business HRM policy and practice. The simplification of industrial awards and their substitution with enterprise agreements was motivated by the desire to increase the level of flexibility in the workplace (Horstman, 1999). Reeve *et al.*, (2012) found that in relation to the granting of “family friendly” workplace flexibility, employers were likely to be guided by WR laws and regulations where they exist, but they will also apply their own discretionary judgement based on their assessment of the employee’s case and the general culture of the organisation concerned.

The use of formal HRM policies and procedures, or those determined by regulations, has been identified as potentially imposing constraints on workplace flexibility for small firms, in particular micro-businesses (Kotey & Slade, 2005). However, they are also a protection to ensure that all employees are treated equally and fairly (Baron & Kreps, 1999). Carroll *et al.* (1999) found that many small firms did not make use of formal job descriptions on the grounds that this made things “too rigid” and reduced the level of flexibility in their workplace.

As shown by Lyons *et al.* (2007) most Australian SMEs demonstrate a willingness to pay overtime rates and grant employees flexibility. However, Mankelov (2008) found that dealing with “flexible hours and conditions” was one of the most common HRM areas that owner-managers had to address. Not surprisingly small business owners are focused on what is best for their business and in addition to considering employees’ needs for flexible hours’ they are also highly focused on on-the-job-training, in particular where it affects WHS. Wiesner and Innes (2010) found that a small proportion of owner-managers (3.5%) were using work time flexibility (e.g. time off in lieu, work/home balance, additional annual leave, and flexible working hours) as an additional form of compensation.

Kotey and Sharma (2015) examined flexible working arrangements among Australian SMEs drawing on the ABS Business Longitudinal Database (BLD) for 2007-2011. They found that 39.7 per cent of employers allowed employees to use leave entitlements and 34.5 per cent offered flexible working hours with employees able to take leave without pay or to cash out leave. Their study indicated that flexibility in working arrangements is likely to increase as the size of the firm and its relative complexity increases. In addition, flexibility is more pronounced in services businesses than in manufacturing or primary industries.

Flexibility in workplace arrangements may also increase in concert with the skill levels of the workforce. The use of information and communications technologies (ICT), in particular the moving of work online and off site (e.g. working from home) was also found to be positively associated with greater workplace flexibility. However, the study suggested that employees on full-time contracts were less likely than those on casual and temporary contracts to have more flexibility in their workplace agreements.

Overall, Kotey and Sharma (2015) found that flexible working arrangements within Australian SMEs were relatively uncommon, with the main focus on flexible working hours and use of leave entitlements. There was much less use made of paid parental leave or job sharing. However, as the business grows it appears to have more resources to allow for flexibility of working arrangements and that such flexibility may be required in order to retain more skilled employees. Not surprisingly the use of ICT to allow working from home or remotely, and the tendency of more skilled and educated employees to require less direct supervision, may help to facilitate such flexibility.

Work health and safety in SMEs

Another area where workplace regulation impacts on SMEs is in relation to work health and safety (WHS). Australia's WHS system is administered through state and federal legislation and includes the requirement for all employers to carry workers' compensation insurance. In recent years, steps have been taken to reduce the compliance costs associated with such regulation. For example, in the field of WHS the process of "harmonisation" of federal and state legislation relating to workplace health and safety commenced in early 2012 as part of the Council of Australian Governments (COAG) National Reform Agenda. However, problems continue. A survey of training providers, unions, employers, universities and TAFE institutes found that the level of complexity and compliance in training and reporting WHS issues was still high and yet the evidence of it having direct impact on reducing injuries and deaths was unclear:

"This issue is further exacerbated in Australia where much high-risk work requires mandatory training to achieve competency and ultimately a recognised license to carry out the work. Examples of this include forklift, confined space, working at heights and hazardous material handling tickets. However, as one participant argued, their staff are required to complete mandatory training with an RTO in order to operate a forklift, yet there is no evidence to suggest that this formalised training resulted in better and safer work practice than the informal training in machine use that they previously carried out." (Bahn & Barratt-Pugh, 2014 p. 67)

The study concluded that despite advances in the level of WHS training in Australia the current legislative situation is a major barrier as it did not "create a level playing field" and remained too complex (Bahn & Barratt-Pugh, 2014). Given the legal complexities associated with WHS legislation and regulation in Australia and its potential negative impact on employment within small firms, the recent decision by the NSW District Court in the case of *Safe Work NSW v Wollongong Glass P/L [2016] NSWDC 58* may be instructive.

In this case the death of a factory worker and the subsequent prosecution of the SME employer were overturned by the court on the grounds that the "system of work", whilst informal in nature, was adequate under the circumstances. In effect the absence of any formal, written WHS system is not by itself grounds for legal liability. What is important is the ability of the employer to lay down a safe and proper practice and use due diligence to ensure that such practice is observed by employees (NSW District Court, 2016). Kotey and Sheridan (2004) found that formal WHS procedures were common across the majority of Australian SMEs regardless of size potentially as a result of regulatory enforcement. Further, as the size of the firm increases the more these policies were actively communicated to employees.

Training and development in SMEs

Training and development of the workforce is an important part of the growth of a small firm and also important to enhancing productivity and performance (Collins, 1982; Terpstra, 1994). Loan-Clark *et al.* (1999) found that the investment in training within small firms in the UK was higher than previous research had suggested. However, it was influenced by the characteristics of the firm's management and the size and complexity of its workforce. Larger firms were more likely to invest in training as were firms with a more skilled workforce.

Family owned firms were less likely to invest in training, while firms with more managers were more likely to invest in management development training. This finding in relation to family owned firms was supported by other research (de Kok *et al.*, 2006). Within many SMEs, in particular mid-sized companies with established HRM protocols, the termination of an under-performing employee is more likely to occur than seeking to invest in their training and development (Kotey & Sheridan, 2004).

As with many other aspects of HRM, small firms tend to approach training and development in a much more informal and "ad hoc" manner than their larger counterparts (de Kok *et al.*, 2006). This is due to the lack of resources and economies of scale for such training, and when they do invest in training it is short term in focus (McGraw, 2014). However, Wiesner and Innes (2010) found that the level of adoption of formal and informal training within Australian SMEs was high. According to Kotey and Slade (2005) the most common form of training within SMEs in Australia was on-the-job training, but this changes as the firm gains in size. Growth sees the firm investing more in management development training and the delegation of training of frontline staff to middle level managers.

In relation to skills development training and workplace regulations in Australia, Oliver (2010) found a relative decline in the recognition of trades qualifications, apprenticeships and traineeships within the "modern awards" introduced under the *Fair Work Act 2009*. An analysis of these awards found that they had "set back the gains made in some state awards" by not including specific competency-based progression for apprentices and trainees and high rates of pay for adult apprentices. There was also relatively little formal recognition of newly emerging traineeships and VET qualifications other than in cases where specific occupational licencing is required (e.g. child care, aged care).

Grievance, discipline and dismissal and the small firm

The earlier discussion over the unfair dismissal laws highlights the importance of grievance, discipline and dismissal issues within the small firm. Harding (2002) in an investigation into the impact of unfair dismissal laws on SMEs found that the majority (69.8%) reported that such laws had influenced how they dealt with employment and employee management. In particular, 51.6 per cent reported that the laws had influence their procedures for dealing with employees who were not performing as desired. This translated into measures such as a greater use of fixed term contracts (11.6%), employing more casual and part-time staff but less full-time staff (21.3%) and having longer probationary periods (26.6%). In family owned firms the tendency was to employ more family and friends.

The removal of unfair dismissal laws on firms with less than 15 employees alleviates these concerns for the majority of SMEs, which comprise the majority of all Australian firms (DIISR, 2011). However, the pattern of findings from Harding's (2002) study suggests that many owner-managers in small firms will seek to avoid recruiting employees that they feel are going to "cause trouble".

Robbins and Voll (2005), in their survey of Australian small business owners note that the majority (83.7%) had not had to terminate an employee within the 5 years prior to their study. Further, only 40.4

per cent of these owner-managers had formal procedures in place for how to deal with terminations or dismissals. Forsyth (2012) also noted that the available evidence suggests that there is:

“...little need for the use of ADR [alternative dispute resolution] in workplace and employment conflict resolution.” (Forsyth, 2012 p. 483)

However, Forsyth (2012) also makes the point that many of the problems associated with the implementation of *WorkChoices* was that it pushed the employer and employee into the realm of contract law that was weighted in favour of the employer. It was also not sufficiently supported by the training and accreditation of third party dispute counsellors. By comparison Forsyth (2012) found the *FairWork Act* offered a better framework for dispute resolution and was consistent with international standards of best practice for the resolution of disputes in relation to individual employment rights and interests. However, he was critical of the absence of negotiated dispute resolution clauses in enterprise agreements, which he argued is “not conducive to effective dispute settlement”.

Managing for peak performance in SMEs

The development of enhanced workplace performance and productivity is recognised as a key to helping improve the overall level of economic growth within a country. It has attracted specific policy interest within New Zealand (Hawthorn, 2012) and the UK (White *et al.*, 2003). Small firms seeking to grow will need to enhance the overall performance of their employees with attention given to ongoing performance appraisal (Kotey & Sheridan, 2004; Kotey & Slade, 2005).

For SMEs seeking to grow through innovation the quality of their human capital is likely to be a significant determinant of their overall success (McGuirk *et al.*, 2015). Further, the quality of the interaction between the firm’s management and its employees is another important factor in the overall performance of the company in terms of productivity and innovation (Stoffers *et al.*, 2014; Georgiadis & Pitelis, 2012; Andries & Czarnitzki, 2014). Of importance is the awareness by owner-managers of SMEs as to the nature of and benefits from high performance HRM practices, and then their ability to translate this awareness into effective HR strategy (Kroon *et al.*, 2013).

Wiesner, McDonald and Banham (2007) conducted a survey of 1,435 Australian SMEs and found a “moderate level of adoption of high performance management practices” with the overall picture looking “relatively bleak”. Not surprisingly the larger the firm became the more likely they were to have adopted high performance management practices. The presence of a specialist HR manager within the firm was found to be positively associated with the adoption of these practices, but this was also found for the presence of trade union members in the company’s workforce, although their influence was only moderate. In their study of Australian SMEs Wiesner and Innes (2010) also found that many firms were using performance appraisal practices to help manage their employees. Such employee performance appraisal systems were found to be increasingly more formal in nature and included employee participation and communication practices.

The literature also shows a relationship between workplace flexibility and firm performance (Pitt-Catsouphes *et al.*, 2015) a multi-country study of SMEs in the EU conducted by Smith and Zagelmeyer (2010) found that flexibility in the operating hours of businesses was a positive trend for firms. However, small firms lack the ability to extend opening hours, which thereby favours large companies. The use of employment measures such as paying overtime and penalty rates, while less complex to manage, were not found to be as effective as other strategies (e.g. shift work and use of casuals).

According to White *et al.* (2003) the most important elements in developing high performance management practices are working hours, performance appraisal systems, group working practices and performance-based pay. Employers are likely to be focused on the hours of work that employees

are paid to do as well as the flexibility that they are able to offer in how such hours are used. At the individual employee level the issues are usually how to balance work and family commitments. Their analysis of firms in the UK found that “spill-over” effects between family and work were less pronounced than many earlier studies had suggested. For example, two-income families were not found to suffer from these “spill-over” effects any more than single income families.

A comparison of high and low performing SMEs in Australia found that the better performing firms operated with higher levels of flexibility in work practices, career path development, positive rewards and organisational support, constructive feedback to employees as well as access to training and development, engagement and participation (Verreynne *et al.*, 2013). An important element was the firm’s ability to actively engage its employees. As noted in the paper:

“Our findings indicate that employment systems in high-performing small firms shared many attributes linked to organizational performance through employees who are aware of the practices that they believe will make the firm more successful, are highly committed to enacting those practices, and demonstrate quality consciousness. More importantly, our results reinforce the importance of participation mechanisms to enable and support enhanced firm performance. Firms with effective voice and participation, complemented by robust HR systems, showed enhanced organizational performance.” (Verreynne *et al.*, 2013 p. 422)

START-UPS, SMALL FIRMS AND JOB CREATION

Having examined the legislative context of WR laws and regulations and their impact on SMEs and family firms, and examined the literature associated with how small firms manage employees, we can explore the bigger picture of how such firms do or don’t create jobs. This is a fundamental issue for our research questions.

Interest in new venture creation has been a major plank in government small business and entrepreneurship policy since at least the publication of the Birch Report in 1979. That report suggested that throughout the 1960s and 1970s most job creation in the United States had come from the small business sector rather than their larger counterparts (Birch, 1987). It triggered a strong interest among governments around the world in the small business sector and more recently the encouraging of entrepreneurial activity typically associated with the founding of high-growth firms.

The importance of “Gazelles”

While Birch’s work has been challenged for its methodology (Davis *et al.*, 1994), other studies have found support for the view that small firms create more jobs (Neumark *et al.*, 2011). However, there are caveats to be placed on this view. Multi-country studies have indicated that the job creation is primarily due to a relatively small proportion of high-growth “entrepreneurial” firms within the economy (OECD, 2002; Clayton *et al.*, 2013; EDSE, 2016).

The OECD (2010a) defines high-growth firms as businesses that have an annualised average growth rate of more than 20 per cent per annum over a three-year period. Such firms also need to have ten or more employees at the start of the observation period. These firms are generally estimated to comprise no more than 3 to 6 per cent of all firms by employment and 8 to 12 per cent by turnover. High growth younger firms aged less than 5 years are known as “Gazelles”, and these businesses typically comprise less than 1 per cent of all firms by employment and 2 per cent by annual turnover (OECD, 2010a).

Although high-growth firms can be found across all industries, most tend to demonstrate common characteristics. First they are often export focused, and second they invest more than the average in innovation. They are also generally very effective at exploiting intellectual property assets, using their

networks and securing financial resources (OECD, 2010b). However, such firms are also high risk and large scale multi-country studies suggest that few new businesses will survive 5 years, with policy makers urged to put their focus less on the start-up phase and more on the scale-up phase (Davila *et al.*, 2015). In fact, U.S. research, has shown that more jobs are created by older high-growth firms than the younger “Gazelles” (Clayton *et al.*, 2013).

Only a few make a difference

Longitudinal research of people who started up a new business venture found that most did so for little more than private benefit and created no additional jobs beyond the replacement of the job they had prior to self-employment. In fact, most were financially worse off than they would have been had they stayed in employment. Further, this was found to be the case whether they were “ordinary” businesses or the “high-tech” variety created by Science, Technology, Engineering or Mathematics (STEM) graduates (Acs *et al.*, 2016). As the study noted:

“Few new firms enter to innovate, and very few entrepreneurs hire anyone except themselves and have no interest or ability to expand after creating a job for themselves. In conclusion, supporting people to become entrepreneurs would mostly support one-man me-too shops in low-growth, low-margin industries where there is no or little innovation undertaken.” (Acs *et al.* 2016 p. 16)

Australian research has found similar evidence. An examination of the Business Longitudinal Study (BLS) found that most small business owners had little or no desire for growth beyond their current level and were also not focused on exporting or innovation. Small firms also had very low levels of unionised employees and this increased the smaller the business. The majority of small firms were not net job creators, with most net new jobs being created by a relatively small number of high growth firms (Lattimore *et al.*, 1998). This suggests that most job creation is caused by high-growth firms, potentially older than 10 years (Clayton *et al.*, 2013). Although young firms (e.g. aged less than 5 years) high-growth firms “Gazelles” can also make a contribution. However, such firms comprise only 3 per cent of all new business start-ups. These firms are typically innovative, and can be found across all industries not just the “high-tech” sector (Hendrickson *et al.*, 2015).

What this indicates is that most small business start-ups are not high-growth firms, but self-employed freelancers or “lifestylers” who may not seek rapid growth and will either employ only a few people or nobody. In fact, the majority of nano-business owners are generally happy to remain the only employee within the firm and form a very large proportion of the small business sector (McKeown & Phillips, 2014). However, it also highlights the need to focus any discussion over the role of workplace relations (WR) laws and their impact on employment within start-ups more on high-growth firms.

Australia as a place to do business

If only a few high-growth firms are likely to make a significant impact on employment creation and economic growth attention needs to be given to these firms and how easily they can do business in Australia. The World Bank (2014) *Doing Business* study identifies labour market regulation as one of the key areas for attention with seeking to reduce barriers to new venture creation and growth. This research found that excessive complexity or cost in the registration and establishment of new businesses can not only create more informal and under-performing firms, but lead in many countries to corruption as the need to “grease the wheels” to get things done becomes necessary (Dreher & Gassebner, 2013). Overregulated labour markets were also found to lead to more informal business activities with barriers to formal employment and too much rigidity in the economy (World Bank, 2014).

While Australia does not have a serious issue with corruption by regulators in the formation of new business ventures, there are WR laws and regulatory issues that might impact on the hiring decisions of start-up and early stage firms seeking growth. Studies from the 1990s suggested that major areas of concern for small businesses were the compliance costs associated with the superannuation guarantee, payroll tax, WHS, Worker's Compensation, unfair dismissal and even Fringe Benefits Tax (Lattimore *et al.*, 1998). The concerns raised by small businesses in relation to these issues were not the need to pay them, but the compliance cost of the time taken by the owner-manager to ascertain what regulations applied to them, and then the paperwork needed to satisfy these requirements. As noted:

"In summary, these surveys indicate that of firms' total compliance burden, tax issues are the major concern for firms of all sizes. When specific areas are considered, fringe benefits tax and superannuation generally had the highest ranking among small businesses. Among other government regulation, occupational health and safety, environmental regulation, unfair dismissals and workers' compensation appear to be the major areas causing difficulty." (Lattimore *et al.*, 1998 p. 190)

At the macro level Australia's global profile in relation to labour market regulation and its impact on the ease of doing business can be accessed via the World Bank's "Doing Business" annual report (World Bank, 2016). In terms of the ease of starting a new business Australia's global ranking has declined steadily over recent years, falling from 7th place in 2015 to 11th place in 2016. This compares with New Zealand, which has ranked 1st in the world for both years. Despite this, it still only takes an average of three procedures, 2½ days and about 0.7 per cent of per capita income to start-up a new business in Australia. This is still better than the United Kingdom (ranked 17th), the United States (ranked 49th), Japan (ranked 81st) and the regional OECD average (World Bank, 2016).

Key areas of time and money costs associated with launching a new business are the registration of the company with the Australian Securities and Investments Commission (ASIC) (approx. 1 day and a cost of A\$457), the Australian Taxation Office (ATO) (online at no cost with less than a day in time spent) and taking out Workers' Compensation Insurance if employing. Once the business does start to employ additional costs will emerge in relation to the payment of taxes and related charges. These include company tax where PAYG wages and salaries are included, state payroll taxes, workers' compensation, fringe benefits tax and the superannuation guarantee.

As shown in Table 1 the cost in both time and money for firms to address superannuation guarantee, payroll tax and workers' compensation charges are quite high. Based on the assumptions made by the World Bank (2016) these employment related charges can amount to as much as 21 per cent of the firm's profits.

Table 1: Summary of employment related taxes and charges

Tax or charge	Payments (number)	Payment method	Time (hours)	Tax rate	Tax base	Total tax (% of profits)
Corporate income tax	1	Online	37	0.3	Taxable profits	25.99
Superannuation guarantee	1	Online	18	0.095	Gross salaries	10.57
Payroll tax	1	Online		0.0545	Total payroll	5.17
Workers' compensation	1			0.039	Gross salaries	4.4
Fringe Benefits Tax (FBT)	1	Online & jointly		0.47	Grossed-up taxable value of FBT	1

Source: World Bank (2016).

Policy prescriptions for stimulating job growth

Drawing on the preceding discussions we might now ask the question, what changes to Australia's existing regulatory frameworks might be needed in order to influence productivity and growth for SMEs? Research undertaken in the United States since the Global Financial Crisis (GFC) highlights the importance of young, high-growth firms to job creation (Wiens & Jackson, 2015). However, it also notes that the rate of new businesses as a proportion of all firms had declined from 16 per cent in the late 1970s to around 8 per cent by 2011. To stimulate job growth, it was recommended that government policy address five interrelated areas:

1. **Encourage immigration** – migrants were found to be twice as likely to found a new business than their locally born counterparts. Business migrants were of particular value and special visas for “immigrant entrepreneurs” were recommended.
2. **Remove regulatory barriers to growth** – regulations and “red tape” likely to make it difficult for small firms to grow were viewed as areas for both federal and state governments to address.
3. **Simplify taxation systems** – making taxation less complex and easier to pay was another area highlighted. In particular, any complexities associated with federal and state taxation systems.
4. **Labour mobility** – rigidities in the employment of skilled labour due to “occupational licensing” was one area highlighted in the study. This included professional as well as skilled trade's areas where the major barriers were accreditation, years of experience, licensing costs and other impediments. Many of these regulations were imposed as a result of work health and safety (WHS) concerns. However, they also served to “fence out” any new entrants to the industry and resulted in higher wages for those qualified or licenced. A related concern was the use of “non-compete” clauses in contracts that restricted managers and technical employees from leaving a firm and setting up their own ventures.
5. **Invest in education and skills development** – the fifth area for attention is the need for governments to invest in education and skills development amongst the broader population. Many fast-growing firms need to hire well educated and appropriately skilled staff. They typically lack the time or resources to provide the training.

In the European Union (EU) labour mobility, particularly for skilled and professional workers was also highlighted as an area for attention (Osimo, 2016). This ability to “access talent” from within the EU is reflective of the emphasis on encouraging more immigrants into the United States. It was recognised that more needs to be done to attract talent back to the EU and address employment and taxation laws and regulations that impeded flexibility of labour hire within small firms.

The path to more productivity, growth and job creation is indirect

What this suggests is that the policy levers that need to be pulled to stimulate growth and job generation amongst small firms and start-ups are largely indirect in nature. Direct intervention to encourage more start-up firms or encourage entrepreneurship is likely to be less useful than focusing on more macro social and economic issues. As noted in the research:

“Contrary to the conclusions of most earlier studies, this regionally focused analysis found that the public sector can affect few significant factors to encourage entrepreneurship. For example, despite billions of dollars in government research expenditures, which widely are believed to trickle down to the private sector, area research universities and patents do not contribute to higher rates of entrepreneurship.”

“Education appears to be the most significant factor that the public sector may affect. Metropolitan areas with more college graduates will produce more start-ups; however, while college completion often is considered the minimum indicator of high skill, the study showed that a higher high school completion rate will further increase the area’s start up rate.” (Motoyama & Bell-Masterson, 2014)

These views are echoed by Acs *et al.* (2016) who argue that government policy associated with the direct targeting of start-ups and encouragement of entrepreneurs was rather misguided. A position also supported by other researchers (Shane, 2009). Instead they argue for the focus to be put on areas like immigration, health and education which have indirect but potentially positive impacts on entrepreneurial growth and ultimately job creation.

Similar recommendations have come from the EU (Osimo, 2016; WEF, 2014) with education of the workforce as the first area of priority. The need for skilled employees and the lack of finding suitably skilled workers was identified as a major impediment to future growth among one-third of business owners surveyed (McKinsey, 2014). In particular skills in computer science, software development and general operation of information and communications technologies (ICT).

This was illustrated with the case of Australian technology start-up and success story Atlassian. The company was unable to find the skilled software technicians it needed in Australia during its growth phase and made extensive use of 457 Visas to bring skilled migrants to Sydney while it invested in the training of local staff. Atlassian CEO and founder Scott Farquhar is on record stating that his company was constrained by the need to hire the right people at a global level and the “on-costs” of growing the workforce such as payroll tax (Heber, 2015). Unfortunately, many migrant workers in Australia under 457 Visas face insecurity, isolation and a lack of support (Velayutham, 2013).

Labour mobility and occupational licensing

The issue of “occupational licensing” is also an area that has been identified as impacting on the ability of firms to secure the necessary skilled employees that they need. Research undertaken in the United States found that occupational licensing of professionals and skilled tradespeople led to higher wages for these occupations, but that these licenses were often regulated across different federal, state and local jurisdictions. It also ranges from relatively simple certification (e.g. real estate agents, travel agents and automotive mechanics) to expensive professional “rights to practice” as found in areas such as the law, medicine, education and engineering (Kleiner & Krueger, 2009).

Occupational licensing helps to protect particular professional or trades skills against the impact of offshoring work to lower labour cost countries. In such circumstances the demand for these licenced service providers increases leading to high wages and more employment (Crisciuolo & Garicano, 2010). Although occupational licensing was initially introduced to protect skilled trades, guarantee quality and address WHS concerns, the overall trend in certification has grown. For example, in the 1950s less than 5 per cent of American workers were required to have a license to do their jobs. By 2008 this had grown to 29 per cent.

However, the benefits to consumers of such licensing have been questioned and it has been argued that it limits job growth. Research in the United States has also indicated that it can restrict migration of professional and skilled workers between states and serve as a barrier to workforce mobility (Kleiner *et al.*, 1982). This has led to suggestions that U.S. federal and state authorities undertake cost-benefit assessments of any new occupational licensing requests and promote best practice models. Further, that any licensing standards be developed so that qualifications can be used across state borders with minimal costs in training or residency. Finally, that some occupations should have certification but no regulation (Kleiner, 2015).

Australia has a federal system and like the United States has seen a growth in occupational licensing and a complexity of federal, state and local regulation of such licenses with the involvement of a range of professional bodies that oversee and approve education, training, registration, certification and licensing (Parker and Beri, 1997). The benefits of occupational licensing are generally associated with its ability to enhance quality of work undertaken, with benefits to superior WHS and productivity outcomes, as well as promoting continuous professional development. However, the counter view to occupational licensing is that it restricts the movement and flexibility of labour, reduces labour supply, reduces competition and increases the cost of labour (Love *et al.*, 2010).

Regulatory frameworks and SME productivity

In a research paper for the Productivity Commission investigating the decline in productivity within Australian industry, Parham (2012) highlighted the need for better industry-level analysis. This needs to examine the relationship between investment in capital stock and labour productivity. His study raised questions as to whether the decline in productivity over recent years was caused by the high profits enjoyed as a result of the mining and resources boom. This enabled firms to ignore productivity and tolerate inefficient utilisation of capital and labour. He also questioned whether “productivity-sapping” regulations might have played a role.

Lattimore *et al.* (1998) in another research paper published by the Productivity Commission, examined government policy and programs designed to assist SMEs. They devoted a chapter to “best practice” in regulatory design that is worth reviewing here. In the design of regulations Lattimore *et al.* (1998) outline a framework with at least six key factors associated with good design principles:

1. **There should be a good rationale for action** – any regulation needs to be founded on a strong and persuasive argument for its existence. Government regulation is by nature a blunt instrument and can create as many unforeseen and harmful externalities as it does beneficial effects. An evidence-based rationale that considers all the social, economic and environmental impacts of the new laws or regulations needs to be developed.
2. **Consider the risk of government failure** – although many laws and regulations are well intentioned they can rapidly become irrelevant or even harmful if technological, economic, social or environmental factors change. Policy makers must assess the longevity of their legislation and how any regulatory regimes can adapt to unforeseen changes to their task environment.
3. **Decide on the choice of instrument** – not all economic, social or environmental problems are best addressed by laws and regulations. In many cases, self-regulation within industries, supported by education and “best practice” principles for management behaviour can achieve change without the “red tape” that often accompanies regulatory regimes. Such regimes need to consider whether prescriptive rules, performance-based rules, principle-based standards, self-regulation or just market-based mechanisms are the best instrument for achieving the desired outcomes.
4. **Develop the regulatory process** – once a proposal to introduce regulation is decided the process followed in its development needs to be carefully managed. The formulation of laws and regulations is often defective. Key considerations in the development process are: transparency; consultation with all key stakeholders; forewarning; grievance procedures; sun setting and changing incentives.
5. **Establish the regulatory design principles** – the development of “best practice” regulation is likely to be enhanced by a series of principles that provide the team tasked with the development of the new regulations a checklist for good design.

6. **Undertake a cost-benefit and superiority test** – once designed the new regulations should be subject to an assessment of their cost-benefit (considering all costs not just those of the regulatory agency), and if the benefits do not exceed the costs they should not be adopted. Any new regulation should be able to demonstrate that it is superior to existing laws and regulations using objective measures not just political arguments.

SUMMARISING THE FINDINGS

In summarising the literature relating to how WR laws and regulations might influence start-ups and early stage firms in their ability to employ, the overall picture that emerges is one of a paucity of clear evidence that such laws and regulations have any serious impact at all. As noted in the preceding discussion, the majority of small business start-ups are either self-employed individuals seeking to set up a nano-business of one with little intention to employ, or “ordinary” small business owners with modest growth ambitions. For the latter, employment decisions are driven by growth in the business that makes the owner-manager unable to operate the company effectively without labour.

WR laws and regulations are likely to be viewed as a necessary compliance cost and small business owners will seek to take the easiest route to getting an agreement in place. The presence of industrial awards that they can use as benchmarks for determining wages and conditions is generally seen as a positive so long as they are easy to understand and apply. The cost of compliance with employment related taxes and charges such as the superannuation guarantee, workers’ compensation, payroll tax and FBT may also impose burdens on start-up and early stage firms that may provide a disincentive to employment. However, there is little available evidence that this is the case.

It should be recognised that the employment decisions of “ordinary” small business owners and those of “entrepreneurs” seeking to grow “Gazelle” firms are likely to be different. The latter firm is by nature more innovative and globally focused than its “ordinary” counterpart. Such firms are more likely to need skilled employees and staff with international perspectives. While relatively little research has been done on the specific impact of WR laws and regulations on high-growth “Gazelle” firms it is likely that such firms will be influenced by factors such as the ability to hire employees with specific skills and may be impacted by occupational licensing, or immigration policies that restrict skilled migrants from acquiring work visas.

Our review of the literature also suggests a strong relationship can be found between the adoption of best practice HRM processes and the performance of SMEs. As outlined above, this can be based on a range of factors, but effective communication between employer and employee, appropriate and timely performance appraisal, training, development and support, employee engagement and workplace flexibility seem to be of particular importance.

The available evidence also points to the influence of enhancing the management education of SME owner-managers to enable them to understand the merits of high performance HRM strategies, how they work and what steps they need to take to implement them. In addition to the owner-manager’s level of education, knowledge and skill as a team leader, the education, knowledge and skills of their employees also seems important. This highlights the potential importance of workplace training and education, moving from an informal “on-the-job” paradigm to a more structured regime taking place within the firm’s wider HRM strategy.

Research suggests that Australian SMEs adoption of high performance HR management practices is “relatively bleak” (Wiesner *et al.*, 2007). However, other research has been more optimistic (see: Kotey & Slade, 2005; Wiesner & Innes, 2010; Verreyenne *et al.*, 2013). Nevertheless, the overall pattern that

emerges from our literature review is that while formal HRM performance management practices can have a positive impact on innovation and performances in SMEs, most don't make use of them.

Our examination of the literature further suggests that changes to regulatory frameworks in order to engender "best practice" and enhance productivity within SMEs is likely to have many points of focus. Understanding the behaviour of SMEs requires attention to be paid to five broad areas (D'Amboise & Muldowney, 1988). The first of these is the firm's "task environment" comprising its industry and the changing nature of that sector's dynamics.

The second is the "organisational configuration" of the business. Is it a nano-business, micro, small or mid-sized? Does it have a complex or simple structure in terms of operating locations, divisions, and/or ownership? The third area is the "managerial characteristics" that comprise its corporate leadership. For example, is the owner-manager experienced, strategic in their thinking, entrepreneurial and well-educated in management, or are they a novice in business?

Fourth, what is the firm's track record or history of success or failure? Is it profitable, well-managed and efficient with a commitment to best-practice and innovation, or not? Finally, what is its pathway for "evolution"? Does the business have a history of growth and does its owner-manager seek to grow and how?

These issues and questions are important to the development of any "best practice" regulatory frameworks. Industry sectoral analysis is required to get an appropriate understanding of how SMEs in Australia are performing, what their management and organisational structure and complexity is, and how they are or are not growing. Once these patterns are identified from available data sources it is necessary to examine what impact regulations may or may not be having on their productivity.

Conclusions and future directions for research

Our review of the literature relating to empowering entrepreneurs has provided some deeper insights into the four research questions outlined earlier as well as highlighting gaps in the current body of knowledge that require further investigation.

WR laws and regulations impact on SMEs

The first two research questions deal with the impact of WR laws and regulations on SMEs:

Research Question 1: *How do WR laws and regulations influence the behaviour of start-up and early stage firms in relation to their decision to employ?*

Research Question 2: *How do WR laws and regulations influence the behaviour of SMEs and family owned firms in their management of employees?*

The main areas where WR laws and regulations are likely to impact on the management of employees are in relation to pay and conditions, WHS and the hiring and termination of employment contracts, essentially the areas covered by the laws and regulations (Gray, 2005). This can also involve the training and development of staff where specific skills and accreditation are needed.

As discussed earlier most SMEs and family owned firms have a largely informal approach to the management of employees. Although there is evidence from recent research that more formal HRM practices are becoming more common within Australian SMEs, the overall picture is one of informality. Where small business owners are likely to be impacted by legal and regulatory compliance (e.g. WHS) they will more likely adopt formal systems. However, for the majority of SMEs, employee management is a largely ad hoc process of decision making with relatively little formal HRM strategy.

Recruitment and selection pay and conditions, training and development, plus grievance, dispute resolution and dismissal are generally undertaken by owner-managers acting alone without the support of a professional HR manager. Where they can obtain clear and predetermined benchmarks for pay and conditions (e.g. via industrial awards), most owner-managers will use this rather than try to negotiate enterprise agreements. For family owned firms the employment of family members tends to make the informality even more likely.

Further research is needed to examine the relationships between WR laws and regulations on high-growth and low or average growth firms. Are they impacted equally or are there differences? More information is also needed on differential impacts across the various stages of the firm's lifecycle. There should also be consideration of any differences found across industries (e.g. manufacturing versus service firms), as well as those that might be innovation intensive and/or export focused, and those that are not.

Further research is also needed to better understand the specific impact of WR laws and regulations on SMEs and family owned firms. Our review of the literature has found that much of what exists has not specifically examined the nexus between regulation and management behaviour.

Some gaps within the Australian literature are what impact such laws and regulations have across the full cycle of HRM practice for SMEs (e.g. recruitment and selection, wages and conditions, performance appraisal, training and development, discipline and dismissal)? As with Question 1, there is also a need to better understand how this might impact on firms by size, lifecycle stage, industry and rate of growth.

Finally, while the specific impact of WR laws and regulations is our immediate focus, future research should examine this within the broader context of policies relating to immigration, labour mobility, taxation, education and training, and occupational licencing.

HRM “best practice” and SME performance

The third research question deals with the process of “best practice” HRM in SMEs:

Research Question 3: *How does innovation and best practice benchmarking in human resource management (HRM) influence the performance of SMEs?*

The adoption of formal HRM processes is associated with the size of the firm and various internal and external factors likely to impact on the owner-manager's decision making. Having to manage a larger and more highly skilled workforce will see owner-managers adopting more formal “best practice” HRM policies and practices. The involvement of HR professional advice or employing HR professional managers will further develop this. Future research should address some of the apparent gaps in the literature. In particular, the factors that might influence the adoption of formal HRM practices within firms regardless of size, and the role that management education of owner-managers might play in this. While it seems that HRM systems can enhance innovation and performance in SMEs, and that high performing and growing firms make use of them, there remains insufficient data on what specific HRM practices make the most difference. There is also a very “fuzzy” understanding of what “best practice” in HRM practices for SMEs is. It may also differ between firms according to age, size, industry, level of technological innovation intensity and growth.

Regulatory frameworks and SME productivity

The fourth research question deals with the relationship between better regulatory frameworks and productivity in SMEs:

Research Question 4: *What WR regulatory frameworks might influence productivity within SMEs?*

Much of the political debate relating to small business policy has focused on taxation, labour market flexibility and the reduction of “red tape” compliance costs. Although these areas are undoubtedly important for some firms there is still a relatively mixed picture over the impact that these issues may have on SME productivity. With so many small firms operating in a largely informal, ad hoc and idiosyncratic manner, it is unclear where or how major changes to regulations would have the most impact. However, modelling by Soames, Bruncker and Talgaswatta (2011) of Australian industry data using the ABS Business Longitudinal Database (BLD) found that innovation in firms is associated with enhanced productivity, and that more innovation is likely to take place within the firm when it is facing market competition. This suggests that attention should be given to regulation that enhances market competition and encourages innovation.

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