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The Secretary
Senate Standing Committee on Education, Employment
and Workplace Relations
Parliament House
CANBERRA A.C.T. 2600

December 19 2008

Dear Committee Members,

FAIR WORK BILL 2008

I am generally supportive of the terms of the Fair Work Bill but wish to make a submission on two aspects - unfair dismissals and small business, and redundancy payments.

As to the former, one of the cruellest aspects of WorkChoices was its removal of unfair dismissal rights for persons employed by small and medium enterprises with 100 employees or less. This exclusion was of course in addition to a requirement for a six month qualifying period and the removal of rights in cases of redundancy.

On a number of occasions since March 2006, I have had clients who had been employed for years by a small employer and who were terminated in circumstances which were chronically unfair, often just before Christmas, and with payment of a few weeks wages in lieu of notice. They had no unfair dismissal rights and their only remedy was a common law claim for 'reasonable notice' - which involved costs risks for a family with an unemployed breadwinner and which was at times, defeated by a express contractual term in relation to notice.

In my decades of employment law experience, I have observed that the unfairest of dismissals generally involve small businesses in part because small business owners do not have a knowledge of or ready access to professional advice on fair employment practices and in part because the owners see every penny paid to an employee as coming directly out of their own pockets.

There must be unfair dismissal rights for the employees of small businesses and those who would argue for an exemption are locked in a 19th Century view of economics and business in which employers create value and employees should be grateful to have a job at all. In the 21st Century, and in a democracy, there must be a basic acceptance that employees have the right to be treated fairly and decently no matter what the size of the business.

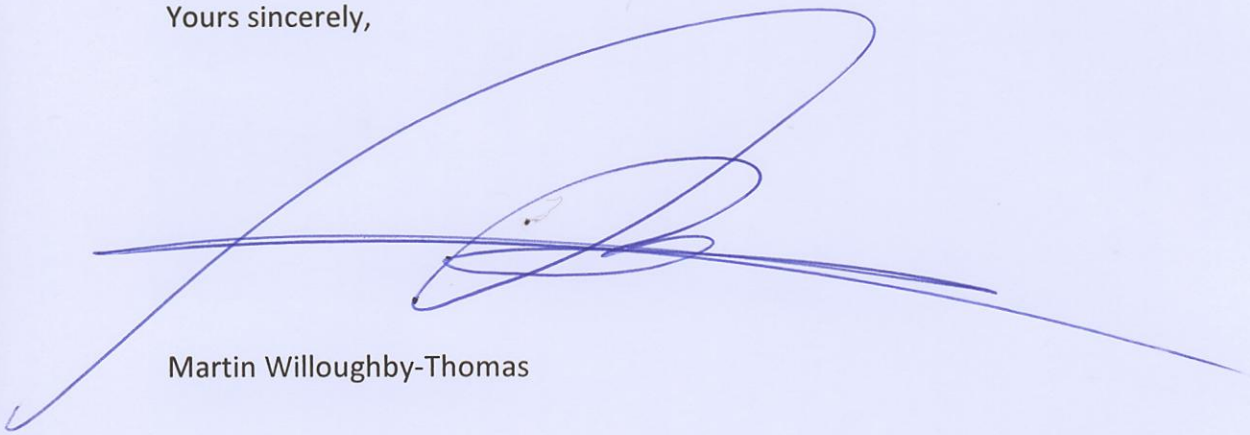
Further, in my submission, there is absolutely no basis for imposing a 12 month qualifying period for employees of small businesses rather than the 6 month qualifying period applicable to other employees under the terms of the Bill.

There is obviously an argument that it takes time for an employer to truly and fairly assess an employee's capacity and suitability but this can be done far more accurately and quickly in a small business where there is generally a close day to day working relationship between the employer and his or her employees. If anything therefore, small business employees should have a shorter qualifying period than other employees.

As regards redundancy payments, the schedule in s.119 of the Bill is something of an anachronism in its specification of 16 weeks redundancy payment for 9 to 10 years but only 12 weeks for at least 10 years. This schedule is based on the Australian Industrial Relations Commission's 2004 redundancy decision which reduced payment for 10 years or more because at that time, employees generally received a long service leave entitlement after 10 years.

These days, in some if not all States, long service leave is payable after 7 years. It is thus no longer logical to reduce the 10 years or more entitlement and that entitlement should be 18 weeks [not 12] - which is not an excessive payment for an employee with ten or more years of loyal service.

Yours sincerely,



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