

**Submission to Senate  
Employment, Workplace  
Relations and  
Education Legislation  
Committee**

**Association of Professional  
Engineers, Scientists and  
Managers, Australia**

**Managers & Professionals Association**

**Professional Officers Association (Victoria)**

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## Contents

	<i>Page</i>
<b>Introduction.....</b>	<b>3</b>
<b>Small Business Employment .....</b>	<b>4</b>
<b>Effect of Government Regulation on Employment in Small Business.....</b>	<b>5</b>
- Alienation of Personal Services Income Legislation.....	5
- Lack of Access to Industrial Tribunal for Independent Contractors and Consultants.....	7
<b>Small Business Workplace Relations .....</b>	<b>7</b>
<b>Special Needs &amp; Circumstances of Small Business That Have an Effect on the Capacity of Small Business to Employ More People .....</b>	<b>9</b>
- Business Support.....	9
- Public Liability & Indemnity Insurance .....	9
<b>Extent to Which Complexity &amp; Duplication of Government Regulation Inhibits Growth</b>	<b>9</b>
- Occupational Health & Safety .....	10
- Environmental Legislation.....	10
<b>Measures That Would Enhance Capacity Of Small Business To Employ More People</b>	<b>10</b>
- Amendment to APSI Legislation.....	10
- Amendment to Workplace Relations Act 1996 to Provide for Contractor and Consultant Access to Industrial Tribunals .....	11
- Support for Businesses .....	11
- Mentoring .....	11
- Professional Development.....	12
- Services, Networking & Information.....	13
- Encouraging Diversity in Our Business Leaders and Managers .....	14
- Australian Bureau of Statistics.....	14
- Public Liability & Professional Indemnity Insurance.....	14
- Occupational Health & Safety & Environmental Legislation .....	15
<b>Conclusion.....</b>	<b>15</b>

## INTRODUCTION

1. This submission is made on behalf of the Association of Professional Engineers, Scientists & Managers, Australia; the Managers & Professionals Association and the Professional Officers Association (Victoria) (the organisations) all of which are registered under the Workplace Relations Act 1996. The combined memberships of the organisations total almost 30,000 and cover the fields of both professional and managerial employment in the private and public sectors throughout Australia. They are the only industrial associations representing exclusively the industrial and professional interests of employees and own business operators in these groups.
2. Small business employment comprises people working in their own business and employees. The latter term is straightforward but for the former the ABS definition of “own business” (catalogue No. 1301.01) has been followed viz people working in their own business include (sole) proprietors and partners of unincorporated businesses. (Working directors of incorporated companies are generally classified as employees).
3. A growing proportion of the membership of the organisations, approximately 10% (3,000), operate micro and small businesses as independent contractors and consultants, largely in the business services sector. They fall into the “*own business*” category just mentioned. We expect this number to grow significantly over coming years particularly in the IT, architecture and consulting engineering sectors of the economy.
4. The organisations estimate that approximately 33% (10,000) of their members are working as employees in industries where there is a high incidence of small business activity, i.e. where there are employers with fewer than 20 employees. These industries include pharmacy, architecture, surveying, veterinary practice, information technology and consulting engineering. It is a characteristic of the employment of professionals in areas such as veterinary science and pharmacy that the overwhelming majority are employed in small practices and retail community pharmacy outlets. In

addition architecture, surveying, IT and consulting engineering is populated by a high proportion of small consultancy groups.

## SMALL BUSINESS EMPLOYMENT

5. Our estimates are supported by figures from the Australian Bureau of Statistics in the table below:

Table 1.1 Number of Small Businesses & Persons Employed, By State 1999-2000

State & Territory	Employing			Non-Employing		Small Business Total Small Business		Total all Business	
	No. of Businesses '000	No. of Employers '000	No. of Employees '000	No. of Businesses '000	Own Account Workers(a) '000	No. of Businesses '000	Employment '000	No. of Businesses '000	Employment '000
New South Wales	188.7	99.1	776.7	172.0	214.1	360.6	1089.9	372.6	2256.5
Victoria	135.8	61.1	540.5	128.5	160.2	264.3	761.8	275.2	1758.7
Queensland	93.3	58.0	382.6	112.4	146.3	205.8	586.9	213.3	1226.9
South Australia	35.4	20.8	150.4	42.7	55.8	78.2	227.0	81.5	493.4
Western Australia	53.4	37.1	237.2	62.9	82.3	116.3	356.5	120.3	701.1
Tasmania	10.7	6.9	50.7	12.0	14.6	22.7	72.3	23.6	140.5
Northern Territory	5.0	2.3	26.0	4.1	5.0	9.1	33.3	9.5	61.6
Australian Capital Territory	10.4	3.8	40.3	7.6	9.1	18.0	53.2	18.6	96.0
<b>Total Australia</b>	<b>532.7</b>	<b>289.2</b>	<b>2204.4</b>	<b>542.2</b>	<b>687.4</b>	<b>1075.0</b>	<b>3181.0</b>	<b>1114.6</b>	<b>6734.8</b>

(a) Includes working proprietors and partners of unincorporated non-employed businesses. Working directors of incorporated businesses are classified as employees.

Source: Australian Bureau of Statistics

6. These figures indicate firstly that 2,204,400 of the 6,734,800 total employees or, 32.7% of all employees, were employed in small businesses in Australia in 1999-2000. Small businesses for this purpose are defined as those which employ less than 20 persons. Secondly they indicate that 10.2% of total employees were own account (own business) workers.

7. Australian Bureau of Statistics Catalogue 1321.0 Small Business in Australia, 1999, shows that between 1983-84 and 1998-99 the number of small businesses increased by 71.4%, an increase of 3.7% per annum. During the same period small employing businesses increased by 87.5% or 4.3% per annum, non-employed businesses

increased by 55% or 3.0% per annum and small business employees increased by 72.5% or 3.7% per annum.

8. The contribution of the small business sector to total private sector employment rose from 49.7% to 50.2% in the period 1983-84 to 1996-97 (Year Book Australia 1999).
9. The non-employing sector though is also an important component of small business. During 1999—2000 there were 542,200 non-employing businesses in Australia representing 50.4% of total small businesses.
10. These figures underline the important contribution made by the small business sector to the Australian economy.

## **EFFECT OF GOVERNMENT REGULATION ON EMPLOYMENT IN SMALL BUSINESS**

### **11. Alienation of Personal Services Income Legislation**

- 11.1 It is the organisations' view that while introduced as an anti-avoidance measure, the Alienation of Personal Service Income legislation has imposed financial penalties on a significant number of genuine independent contractors and consultants. We believe that the four tests to determine contractor status set out in the ATO's rulings (TR 2001/7 and TR 2001/8) do not cover the full range of cases of genuine independent contractors and consultants, and do not discriminate appropriately between genuine contractors and consultants and those attempting to avoid tax by creating an interposed entity.
- 11.2 In spite of widespread consultation with industry bodies and tax professionals, and a major overhaul of the PSI Rulings which were re-released in August 2001, a number of uncertainties with the legislation and its application remain for some independent contractors and consultants. There is ongoing concern with the results test. The emphasis on achievement of a measurable identifiable result largely ignores the reality of provision of professional services where often the service provided is expert

advice and various other business management services. The second of the principal criteria of the test is provision of tools of trade, and there is also concern that this criteria is more appropriate to the manufacturing rather than services sector. The final criteria of the test – liability to rectify defective work – is difficult to judge in the case of expert professional advice and professional services where it can be extremely difficult to determine whether the advice is correct or incorrect.

- 11.3 The 80/20 rule continues to fail to reflect the fact that commercial practice for many consultants involves contracts in place for a period greater than 12 months. Excellence in job performance will often result in further contract work, however the PSI law forces professionals to effectively reduce the number of hours provided to a client in order to diversify their client base and therefore their sources of income.
- 11.4 The organisations are of the view that the ATO's stance in relation to the business premises test in the relevant rulings released in August 2001 will detrimentally affect the growth in home-based businesses – a marked trend in the last decade. The original draft rulings cited examples that supported “notional separation” from residential areas, yet the final ruling states that only complete physical separation is sufficient to satisfy the test. This tightened stance is not a reflection of the reality of commercial practice in many fields of consultation – a home-based business has become a feasible and entirely legitimate way of conducting business – especially in the services sector – and the business premises test fails to reflect the changing nature of work practices in this area.
- 11.5 Similarly, there is no flexibility on payments to spouses. Feedback from members in mid-2001 suggested that there were a myriad of circumstances which can arise to justify legitimate payments to spouses. Partners' efforts in the conduct of small business are effectively being ignored.
- 11.6. The lack of flexibility in relation to these issues indicates that there is still a need for a significant revision of the PSI Rules.

- 11.7 We have put these concerns to Senator Helen Coonon, Revenue Minister and Assistant Treasurer, and will continue to lobby government on behalf of members in the small business sector.
12. **Lack of Access to Industrial Tribunal for Independent Contractors and Consultants.**
- 12.1 As noted earlier in this submission a growing number of professionals and managers are finding employment as contractors and consultants, particularly in the IT, engineering, architecture and labour hire industries. The anecdotal evidence is that some of them are being exploited when it comes to setting contract rates and other entitlements. As the 1968 High Court Decision in Cock's case ruled out the making of awards that prohibit or regulate the engagement of contractors, there is currently no capacity to establish a safety net of minimum entitlements for them.
- 12.2 We propose that the Australian Industrial Relations Commission be given the power to set minimum safety net entitlements for contractors and consultants and to resolve disputes involving contracts including the termination of contracts. Queensland and New South Wales have state legislation in this area that we propose as a model.

## **SMALL BUSINESS WORKPLACE RELATIONS**

13. *"Changes at Work: The 1995 Workplace Industrial Relations Survey"* is the second major survey of workplace industrial relations undertaken by the then Commonwealth Department of Industrial Relations. Significantly this study found that small businesses differed from larger private sector workplaces on a number of industrial relations characteristics. The following points to emerge from the study are in our view important in the context of the Senate Inquiry:
- (i) Small businesses by definition have no higher level of organisation where employment policies can be determined and so they are likely to operate in a less structured way when it comes to dealing with issues of discipline and grievance.
  - (ii) Small business managers are less likely than larger workplaces to hold formal meetings with all employees.

- (iii) Small businesses are less likely than larger workplaces to offer formal training programs for non-managerial employees.
  - (iv) Compared to large workplaces, small businesses rarely have collective industrial agreements. The study found that 19 per cent of small businesses had a verbal agreement and only 10 per cent had a written collective agreement. Only 27 per cent of small businesses with agreements had them registered. Instead small businesses rely more on the use of awards (and therefore on the more formal procedures available such as those under the Workplace Relations Act) in regulating their employment relationships. (Note: The words underlined are ours).
  - (v) Small businesses with the owner present are less likely to have union members. In our view this factor makes it less likely that employees will be informed of their rights under industrial and common law and therefore less able to act to protect their interests.
14. The conclusion we draw from these points in the “*Changes at Work*” study is that if there is one area of the Australian workforce which requires the protection of a safety net of minimum entitlements and access to dispute resolution systems it is the sector employed by small business.
15. It is evident that employees of small business are likely to be less organised, less informed, work in situations where there is a less structured approach to workplace relations and where policies for dealing with grievances and disciplinary issues are not well developed. They are in these circumstances a highly vulnerable group.



16. We therefore see a special role for the Australian Industrial Relations Commission and industrial awards in regularising labour relations in small business. The ABS data we presented earlier in this submission does not support the proposition that what we are arguing will have a detrimental impact on small business or small business employment. In fact the data shows that the reverse has happened: the number of small businesses has actually grown by 71.4%; the number of small business employees has increased by 72.5%; and the contribution of the small business sector to total private sector employment outstripped its rival growing from 49.7% to 50.2% of total employment.

#### **SPECIAL NEEDS AND CIRCUMSTANCES OF SMALL BUSINESS THAT HAVE AN EFFECT ON THE CAPACITY OF SMALL BUSINESS TO EMPLOY MORE PEOPLE**

17. The organisations are of the view that the following are key areas in which small business has special needs and which impact on their operation, their bottom line and therefore their capacity to employ more people.

#### **18. Business Support**

18.1 Small businesses require support and assistance in the areas of business startup, networking, business skills development and professional development as well as relevant business information and general career management advice.

#### **19. Public Liability and Indemnity Insurance**

19.1 The rising cost and availability of public liability and professional indemnity insurance is a major concern to small business.

#### **EXTENT TO WHICH COMPLEXITY AND DUPLICATION OF GOVERNMENT REGULATION INHIBITS GROWTH**

20. Our members have expressed frustration in the following areas which are regulated by a combination of different state and federal laws.

## 21. **Occupational Health and Safety**

21.1 The lack of uniformity in occupational health and safety legislation can make it cumbersome for business to operate across state boundaries.

## 22. **Environmental Legislation**

22.1 The lack of uniformity in relation to environmental legislation in the form of documentation, reporting and licensing requirements can also make operating across state boundaries difficult.

## **MEASURES THAT WOULD ENHANCE CAPACITY OF SMALL BUSINESS TO EMPLOY MORE PEOPLE**

23. It is the view of the organisations that the following measures would enhance the capacity of small business to operate in an efficient, competitive and profitable manner and therefore to employ more people where appropriate.

## 24. **Amendment to APSI Legislation**

24.1 We propose that the APSI legislation and Taxation Rulings be amended to ensure that independent contractors and consultants operating legitimate small and micro-businesses via an interposed entity are not denied legitimate business tax deductions. This will aid their competitiveness, growth and profitability.

24.2 We suggest that Draft Rulings TR 2001/7 and 8 which detail how the APSI legislation is applied be amended to provide for the following:

- (i) the unusual circumstance provisions be broadened to include a period of 3-5 years as an appropriate time for consideration of the 80/20 Rule;
- (ii) the results test be amended to explicitly provide for business services such as provision of IT expertise and specialist advice as identifiable results in themselves;
- (iii) the business premises test be broadened to recognise home-based business as a legitimate way of conducting business; and
- (iv) payments to spouses involved in running a business be deemed a legitimate business expense.

25. **Amendment to the Workplace Relations Act 1996 to provide for Contractor and Consultant access to Industrial Tribunals.**

25.1 We propose that the WRA be amended to apply to all workers employed under any contract or agreement which is wholly or principally for the performance of work by one party to the contract or agreement.

26. **Support for Businesses**

26.1 We believe that the following measures and initiatives encourage the competitiveness and growth of small business and their capacity to employ more people.

27. **Mentoring**

27.1 Professionals in small business who are involved in mentoring relationships with a more experienced small business person have been shown to be more likely to persist in their consultancy area, and to increase their commitment to their professional field. Mentoring allows for the transmission of information, bolsters self-confidence and assurance for the mentee, and provides mentees with networks, important for the attainment of ongoing work as a small business person and further self-directed professional development.

27.2 A 1994 Report by the National Board of Employment, Education and Training suggested that “Business networks and mentoring arrangements are widely regarded as effective, valuable sources of business advice and training. However, it can be difficult to identify reliable channels and sources of advice. In 2000, APESMA approached DEWRSB’s Small Business Enterprise Culture Program for funding to develop and deliver a mentoring program for small business professionals so that it could act as a reliable channel and source of reputable advice. APESMA was successful in obtaining \$14,000 of Commonwealth funding and is in the process of delivering a mentoring program targeted at small business professionals called **Mentors Online**.

- 27.3 The anticipated outcomes of the project are as follows:
- (i) skills gaps identified and business practices improved in specific areas
  - (ii) business plans created or further developed
  - (iii) SWOT (strengths, weaknesses, opportunities threats) analysis undertaken
  - (iv) planning in the areas of professional development and networking
  - (v) general career and business support
  - (vi) greater scope to take on new employees
  - (vii) all of the above leading to improved competitiveness and growth.
- 27.4 The organisations propose that further funding should be made available for development and delivery of mentoring services for small business. Support should include availability of at least part of that funding for IT contractors to develop mentoring programs with an electronic delivery component to ensure services are available to regional and rural as well as metropolitan areas.

## 28. **Professional Development**

- 28.1 We believe that business skills development and relevant continuing professional development is a cornerstone of supporting owners and managers of small and micro-businesses. APESMA in conjunction with Deakin University offers a range of Management Education Programs which emphasise the development of business skills alongside professionals' technical skills. APESMA also offers an annual business skills development scholarship program (this year called Partnership 2002) as a response to the 2000 NCVER Report "It's Not my Problem" which called for mechanisms to be set up to provide for self-managing workers' professional development needs. The scholarship demonstrates our commitment to assisting small business professionals with working towards a broadbased portfolio of transferable skills.

28.2 The study “*Age Counts: an Inquiry into issues specific to mature age workers*” found that over 70 per cent of small business owners had not undertaken any form of business management training, and that there is a lack of training culture in small businesses. The organisations therefore support Commonwealth funding to a range of providers to implement scholarship programs such as Partnership 2002 providing business training and education.

## 29. **Services, Networking and Information**

29.1 The organisations provide access to key services, networking tools and information to its members operating and managing small businesses.

29.2 Connect is a special interest group within APESMA with around 1800 members. It caters for the increasing number of contractor and consulting professionals in the community and provides a platform for them to manage a range of their needs. Connect keeps members informed of industry developments and relevant research, lobbies on their behalf, provides portable member benefits, assistance with finding work, formulating contracts for service and advises on how to structure contracting/consulting operations where needed.

29.3 Connect provides relevant and up to date business startup and business management information via a quality online monograph series, and hosts an online networking facility called Nexus which provides members with a vehicle for sharing industry intelligence, knowledge and contacts.

29.4 The organisations believe that downsizing and workplace restructuring will continue to force changes to traditional labour market structures and lead to the development of non-standard work arrangements. The organisations therefore support measures which encourage member based organisations to provide relevant services to so-called contingent or self-managing workers including casuals, self-employed, independent contractors and consultants.

29.5 A key support service which could usefully underpin services such as those provided by Connect would be a free government-endorsed business startup and advice service along the lines of the Workplace Relations Information Line supplemented by face to face personal business advisors and counsellors.

### 30. **Encouraging Diversity in Our Business Leaders and Managers**

30.1 The organisations are committed to:

- (i) providing support and aspirational models for those currently underrepresented in the ranks of business leaders;
- (ii) encouraging a culture of community by way of shared learnings, information and experiences; and
- (iii) assisting members address obstacles to career advancement and business growth.

30.2 We will continue to develop initiatives in support of these aims and practices and support measures which share this aim.

### 31. **Australian Bureau of Statistics**

31.1 The organisations propose more adequate funding to the Australian Bureau of Statistics to begin to more accurately monitor business exits, failures, closures and bankruptcies. This would ensure that more detailed information is available on whether or not certain groups within the business community are disproportionately represented in business failures. This information is not currently available.

### 32. **Public Liability and Professional Indemnity Insurance**

32.1 The organisations would support measures which ensure the availability and affordability of coverage for engineering and other projects. We have put our views to Assistant Treasurer Senator Helen Coonan to this effect.

33. **Occupational Health and Safety and Environmental Legislation**

33.1 The organisations support changes to OH&S and environmental legislation to standardise reporting, licensing, planning, permit and registration requirements nationally to facilitate small business operation across state boundaries.

34. **CONCLUSION**

34.1 This submission was prepared by Bruce Nadenbousch, APESMA's Director of Industrial Relations, and Kim Rickard, Executive Officer Connect – APESMA's special interest group for independent contractors and consultants and Manager of Mentors Online – APESMA's e-Mentoring program for Small Business Professionals.

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