

Appendix 4

Summary of attitudinal evidence¹

A summary of attitudinal evidence demonstrating the need for differential treatment of small businesses in relation to unfair dismissal:

- A Morgan and Banks survey conducted during 1996 (when the previous Government's laws were in force) indicated that 16.4% of businesses with less than 30 employees had been adversely affected in their intentions to hire people by the federal unfair dismissal laws.
- A survey released by Recruitment Solutions on 10 April 1997 indicated that almost 9% of businesses had employed fewer permanent staff, or deferred plans to employ permanent staff, as a direct consequence of the unfair dismissal laws.
- In a survey conducted by the New South Wales Chamber of Commerce with St George Bank in May 1997, 56% of businesses said that the prospect of unfair dismissal claims had discouraged them from recruiting additional staff to their businesses.
- 'Trends in Staff Selection and Recruitment', a Department of Employment, Education, Training and Youth Affairs-commissioned report compiled by the National Institute of Labour Studies and published in May 1997, found that unfair dismissal laws 'strongly influence' hiring decisions, on the basis of survey and statistical data.
 - Further comments on this report were provided by one of the editors, Dr Mark Wooden, for an article in the *Financial Review* on 27 March 1998. Mr Wooden stated that 48% of employers had claimed unfair dismissal legislation influenced their hiring decisions either to a 'large' or a 'very large' extent.
- In June 1997, the Tasmanian Chamber of Commerce and Industry conducted a survey in which it asked businesses with between 1 to 20 employees to rank 58 issues in terms of their relative importance. Unfair dismissal was rated 11th, with 70% of respondents rating it as at least a 'large' problem.
- The Yellow Pages Small Business Index Survey is the largest economic survey of small businesses in Australia, covering approximately 1,200 randomly selected proprietors of small businesses. The survey conducted from 23 July 1997 to 5 August 1997 asked respondents to nominate the barriers to employing new employees. The cost of employment was the second most popular response, with 18% of those respondents who believed there were barriers to hiring new staff citing this reason.

1 Taken from Department of Employment and Workplace Relations' Submission No: 14, Annex B

- The Yellow Pages Small Business Index Survey conducted from 30 October 1997 to 12 November 1997 contained specific questions in relation to the effect of unfair dismissal laws. The answers to these queries indicated:
 - 79% thought small businesses would be better off if they were exempted from unfair dismissal laws;
 - 33% reported that they would have been more likely to recruit new employees if they had been exempted from unfair dismissal laws in 1996 and 1997; and
 - 38% reported that they would be more likely to recruit new employees if they were exempted from the current unfair dismissal laws.
- In February 1998, the Micro Business Consultative Group published its report. In its report, the group stated that ‘unfair dismissal laws have dampened employment growth in micro businesses. Indeed, we believe there’s strong resistance from many micro businesses to employing more people for fear of potential claims.’
- On 5 March 1998, in an interview on Radio National’s AM program, Mr Rob Bastian, then of the Council of Small Business Organisations of Australia (COSBOA) estimated 50,000 jobs would be created if small business exemption was introduced. Mr Bastian’s estimate was based on 1 in 20 small businesses hiring an extra person if such businesses were excluded from the unfair dismissal laws, which he believed was a conservative assessment.
 - However, on the basis of his evidence to the Senate inquiry into the Workplace Relations Amendment (Unfair Dismissals) Bill 1998, it appears that Mr Bastian’s estimate of 50,000 jobs being created is based on the exemption of small business from both federal and State unfair dismissal laws.
 - It should be noted that it is not possible to determine how many small businesses are subject only to federal unfair dismissal laws, as opposed to those that are subject to only State unfair dismissal laws. Further, small businesses in many jurisdictions could be subject to both federal and State laws.
- On 22 March 1998, the NSW Chamber of Commerce issued a press release stating that 85% of small businesses nominated unfair dismissals as a key issue for businesses with 15 or fewer employees:
 - 42% of businesses surveyed claimed that the prospect of an unfair dismissal claim was a deterrent to employing more staff.
 - 51% of businesses surveyed stated that the unfair dismissal laws were a deterrent to employing more staff.
- In a survey conducted by the SA Employers’ Chamber of Commerce and Industry over the period May to July 1998:

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- 51.5% of respondents who had been subject to unfair dismissal claims had not hired replacement employees:
 - 52% of respondents who had been subject to unfair dismissal claims and did not hire a replacement employee were deterred from hiring new staff because of the prospect of facing another unfair dismissal claim;
 - 74% of all respondents claimed that they would hire new employees if employee access to unfair dismissal laws was restricted; and
 - 77% of respondents with less than 15 employees indicated that they would hire more employees if exempted from unfair dismissal legislation.
- In a Queensland Chamber of Commerce and Industry survey conducted in July 1998, businesses were asked to rank 69 issues in order of importance. Unfair dismissal legislation placed third overall, receiving a rating of 80 out of a possible scale of 0 (of no concern) to 100 (critical concern) which was only five points behind the top rating issue of taxation changes.
 - The Australian Business Chamber surveyed its members in July 1998. Using a similar grading system as the Queensland Chamber of Commerce, unfair dismissals placed fourth overall with a rating of 77 (the top three issues all related to tax). Survey results were also aggregated according to the number of employees employed by each respondent. Employers with between 0 and 20 employees comprised 62% of the respondents, and they ranked unfair dismissals as their sixth most important issue. Unfair dismissals ranked seventh for businesses with 21 to 99 employees and fourteenth for businesses with 100 or more employees.
 - In an August 1998 survey conducted by the Tasmanian Chamber of Commerce and Industry, to identify relevant issues for a State election later that year, businesses ranked unfair dismissals seventh out of 28 areas identified. Rating the problem from 1 (critical) to 7 (not a problem), the majority of respondents who indicated that unfair dismissals was an impediment to business growth placed this issue at the top of the scale (i.e. gave a 1 rating).
 - In its August 1998 newsletter, the Australian Chamber of Commerce and Industry (ACCI) ranked unfair dismissals as seventh in a list of 71 areas requiring change. The Chamber distributed a survey to businesses, asking them to identify current issues that directly affect their individual businesses. Unfair dismissal laws were found to be ‘an impediment to employment’, particularly permanent, full-time employment.
 - The Chamber’s September 1998 newsletter reported that the survey results from businesses with 1-19 employees, viewed in isolation, showed that unfair dismissals remained a critical concern for this group of businesses, placing fourth out of 64 issues. The Chamber identified a causal connection between small businesses’ concerns about the unfair dismissal laws and reluctance to employ additional employees.
 - Statistics from the 1995 Australian Workplace Industrial Relations Survey (AWIRS) have been used recently by the ACTU to show that less than 1% of small businesses

gave unfair dismissal laws as a reason for not hiring staff. But this evidence is not supported by the attitudinal data provided by the survey evidence discussed above.

- A 1998 survey of members of the Australian Chamber of Manufacturers, jointly conducted by the ACM and Deakin University surveyed 2000 firms with less than 300 staff. It noted that 'Unfair dismissal legislation and associated implications for the small business were ... highlighted as employment deterrents.'
- In 2001, Sweeney Research, on behalf of the Victorian Trades Hall Council, conducted a survey of 400 small businesses. It found that 39 per cent of respondents said that unfair dismissal laws affected their businesses.
- In November 2001, ACCI released the results of a survey of affiliates, to which some 2,500 firms responded. The survey found that unfair dismissal laws were ranked as the fifth most important problem facing them.
- In March 2002, CPA Australia released its survey results for 600 small businesses and 105 Certified Practising Accountants (CPAs). When asked to nominate for themselves the main impediment to hiring staff, five per cent of small business and 16 per cent of CPAs nominated unfair dismissal laws as a primary issue. Also, 30 per cent of small business respondents and 44 per cent of CPAs cited a desire to avoid unfair dismissal laws as a reason for employing casuals. The research also found that perceptions about unfair dismissal laws were as much of a barrier to employment as the laws themselves.
- In August 2002, the Centre for Independent Studies issued a short study entitled *Poor Laws (1) – The unfair dismissal laws and long-term unemployment*. This report re-examines international and Australian job research on job creation and employment protection and concludes that a possible explanation for Australia's relatively high unemployment problem is over-regulation of the labour market.
- DEWR has received the results of a survey designed by Mr Don Harding of the Melbourne Institute and undertaken by Yellow Pages examining employer attitudes to unfair dismissal laws. The survey involved 1802 telephone interviews with small and medium enterprises employing fewer than 200 employees. The results disclose that:
 - the cost estimate to small to medium enterprises of complying with the unfair dismissal laws of \$1.3 billion per year is more likely to result in lower employment and higher unemployment than in lower wages
 - 11.1% of small to medium sized employers that don't have employees but previously did were influenced by the unfair dismissal laws in deciding to reduce the number of workers they employed. This translates to the loss of 77,482 jobs (with 35,000 of those in which unfair dismissal laws played a major role).
 - many employers were confused by or unaware of jurisdictional issues associated with the operation of unfair dismissal laws
 - about two-thirds of employers were unaware of changes to federal unfair dismissal laws made in August 2001.