SENATE EMPLOYMENT WORKPLACE RELATIONS SMALL BUSINESS & EDUCATION LEGISLATION COMMITTEE

INQUIRY INTO

THE WORKPLACE RELATIONS AMENDMENT (FAIR TERMINATION) BILL 2002

SUBMISSION BY

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WORKPLACE RELATIONS AMENDMENT (FAIR TERMINATION) BILL 2002

The SDA is totally opposed to this Bill

The intent of this Bill is to:

(i) insert new provisions into the Act which will have the effect of exempting casual employees with less than 12 months employment from being covered by the termination of employment provisions of the Act; and

(ii) require a fee to be paid when termination of employment applications are lodged.

The amendment would validate the operation of regulations purporting to exclude casuals with less than 12 months employment from the termination provisions that were declared invalid by the Federal Court [Hamzy v Tricon International Restaurants/as KFC (2001)].

The Bill adds the previous requirement for this employment to have been regular employment and for the employee to have had a reasonable expectation of continuing employment.

The provision of the filing fee allows for its indexation.

In response to this Bill the SDA reiterates the comments made in respect of the "Fair Dismissals" Bill.

In addition we say that in our view this proposed amendment is nothing other than an attempt to defeat the legitimate claims by casual workers who have been unfairly dismissed.

Casual Workforce is Growing

It should of course be noted that over recent years the number of casual workers in Australia has increased markedly. In 1998 26.9% of the entire workforce was employed on a casual basis whereas a decade earlier the figure was 18.9%. (ABS, Employee Earnings, Benefits and Trade Union Membership, Cat. no. 6310.0).

A majority of casuals are women. The highest proportion of casuals is in the 15 to 19 year age group. The retail and fast food industries employ more casuals than any other industry.(ABS, Labour, Special Article, Casual Employment, July, 1999).

"Some 42% of those in the retail industry worked on a casual basis (that is, without leave entitlements) in August 2000; with more than three-quarters(76.7%) of those working part-time employed as casuals).....The share of of retail industry employment represented by casual working arrangements increased from 38.0% in 1988 to 44.4% in 1996 to 45.2% in 2000" (The Labour Force Market for Retail Occupations- Statistical Overview, Department of Employment and Workplace Relations, February 2002)

According to union membership records of the SDA over half of the unionised retail workforce in Victoria (52%) is casual. Approximately 50% of this group have been employed in the industry with their current employer for less than twelve months.

The nature of casual employment in the retail industry should also be recognised and taken into account. Whilst large numbers of retail workers are employed on a casual employment contract they nevertheless generally work on a regular and systemic basis. The nature of the contract is an administrative convenience for employers, for which they are prepared to pay a casual loading. However many casuals work regularly from week to week, more often than not at the same time and on the same days from week to week. It is a situation of casual employment by name but regular part time employment in fact.

Employment in the retail industry will be significantly affected by the passage of this amendment. In effect the passage of this amendment would leave large numbers of young workers, a majority of them women with no protection from unfair dismissal. Many of these workers would be regular and systematic in their employment patterns but still be denied protection from arbitrary dismissal.

The passage of this amendment will be an encouragement to those employers who wish to be free of emcumberances in the way they manage their employee relations. It will serve as a green light to such employers to engage all employees on a casual employment contract as a means of them being able to avoid the possibility of action against them for arbitrary and unfair behaviour in regard to dismissal matters. Yet these are the very situations the legislation is in place for. The amendment will give a green light to the most uncaring and unscrupulous of employers.

Fair Treatment for all

Casual employees should not be treated differently from other employees when it comes to issue of unfair dismissal. All employees are entitled to be treated fairly, justly and reasonably in relation to an unfair dismissal. This goes to the notion of the principles of natural justice.

The Commission already has sufficient flexibility and discretion to adjust its decision making to take into account the realities that currently occur in any business. However, at the end of the day there are fundamental aspects of the principles of natural justice which should not be able to be removed simply because an employee is a casual employee.

The proposed amendment removes the obligations of employers to issue fair and equitable treatment to all their employees. As such it is manifestly unjust.

The proposed amendment adds nothing to the Workplace Relations Act in terms of making the process fairer but adds everything in relation to giving an unfair advantage to employers against their casual employees that they have unfairly dismissed from their employment.

The removal of the right of access to redress for certain casuals will dramatically increase the balance of power in favour of employers and dramatically decrease the fundamental protection available to these workers. It should be remembered that casual workers are in a very precarious position already and have little or no bargaining strength with their employer.

If, as the proposed amendment provides, only permanent employees or casual employees with more than 12 months regular service can claim for the unfairness of a termination, it will, in our view, encourage some employers to treat their casual staff in an unfair manner. If employers are protected absolutely from any redress being pursued through the Commission by many casual employees as a result of the way in which the termination was carried out, this will be nothing other than a green light to employers who wish to act in an unconscionable or unjust manner.

It is important to clearly understand that those who support this proposal do not produce or rely upon any hard data supporting their claim nor do they produce or rely upon any hard data supporting the need for legislative change.

This Bill should be totally rejected.