



23rd April 2002

Mr John Carter
Secretary
Senate Employment, Workplace Relations
& Education Legislation Committee
Parliament House
CANBERRA ACT 2600

Fax No. [(02) 6277-5706]

Dear Mr Carter

**Re: Workplace Relations Amendment (Fair Dismissal) & (Fair Termination)
Bills 2002**

1. We refer to the above matters which have been referred to the Senate Employment, Workplace Relations and Education Legislation Committee for consideration.
2. We thank you for the opportunity of presenting a submission and you will find this outlined below.

Introduction

3. 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 in these groups.

4. By the nature of their academic training and their roles as professionals and managers in the workforce the employment arrangements for our members are often structured differently by employers when compared with other occupational and employment groups.
5. We estimate that approximately 75% to 80% of our members would be employed under awards and enterprise agreements of the Federal and State industrial jurisdictions. The remaining 20% would be award free.
6. We estimate that approximately 35% of our members employed under Federal and State awards/enterprise agreements would at the same time have individual employment contracts. Overall we estimate that approximately 55% of our total members (i.e. those under awards/EBAs and those who are not) would have individual employment contracts.
7. The organisations estimate that approximately 33% (10,000) of their members are employed 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

8. Our estimate is 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 |
| Total Australia | 532.7 | 289.2 | 2204.4 | 542.2 | 687.4 | 1075.0 | 3181.0 | 1114.6 | 6734.8 |

(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

9. These figures indicate 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.

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

11. 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).

12. These figures underline the important contribution made by the small business sector to the Australian economy. But they also highlight two other important points in the context of the move to restrict access to unfair dismissal laws for small business employees. Firstly, the change will over time have a detrimental impact on a large

part of the nation's workforce. Secondly, the figures debunk the argument that small business growth is retarded by the right to challenge unfair dismissal. The ABS data shows that the reverse has happened: the number of small businesses has actually increased by 71.4%; the number of small business employees has grown 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.

13. The organisations estimate that approximately 2.5% (750) of their members are employed as casuals principally in the industries mentioned in para 7 above.

Small Business Workplace Relations

14. *“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. From the perspective of the current debate over the application of the unfair dismissal provisions of the Workplace Relations Act the following points to emerge from the study are in our view important:

- (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.

15. 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 availability of access to an independent umpire in cases of unfair dismissal it is the group employed by small business. It is clear 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 who will be left even more exposed as a result of the proposal to bar them from access to the unfair dismissal provisions of the Workplace Relations Act.

ILO Convention on Termination of Employment

16. The ILO Convention on termination of employment proposes that all employees, with a small number of defined exclusions, should have the facility to appeal against termination of employment to an impartial body. Size of the employment establishment is not one of the limited number of exclusions cited in the Convention.
17. Our view is that Australia should continue to honour its international obligations by providing access to the unfair dismissal provisions of the Workplace Relations Act to those employees it now seeks to exclude.

The Fair Dismissal Bill

18. The organisations support an unrestricted right to seek redress in the event of unfair dismissal in a cost free jurisdiction before an independent tribunal. The organisations reject initiatives to exempt small business (employing fewer than 20 employees) from the unfair dismissal provisions of the Workplace Relations Act.
19. As noted in para 7 above approximately 33% of the organisations' membership would be adversely impacted by the grant of the exemption proposed in this Bill. In the case of the Pharmacy industry we estimate that there are approximately 4,950 community pharmacies across Australia employing approximately 22,500 employees of which 4,500 would be Community Pharmacists. We further estimate that there would be approximately 80 community pharmacies throughout Australia employing more than 20 employees each. This group would comprise around 1,000 employees or approximately 4.5% of total employees in the industry. The effect of the exemption in favour of employers with fewer than 20 employees in this industry would therefore mean that it would deprive almost 95% of employees right of access to an unfair dismissal jurisdiction under the Workplace Relations Act. Whilst some Pharmacy Assistants are covered by State awards and therefore have access to a State unfair

dismissal jurisdiction the same cannot be said of the 4,500 Community Pharmacists of whom almost 100% are employed under the Federal Community Pharmacy Award 1998.

20. Correspondingly we estimate that almost all of the 2,000 veterinary practices throughout Australia who are respondent to the Veterinary Surgeons Award 2001 would fall outside the scope of any Federal unfair dismissal jurisdiction if it were to be limited to employers with fewer than 20 employees. We estimate that the overall number of employees in the industry would be about half that of community pharmacy, meaning that approximately 11,000 employees of whom at least 2,000 would be Veterinary Surgeons under the federal award mentioned, would be excluded from a right of appeal against unfair dismissal.

Fair Termination Bill

21. The organisations support an unrestricted right for casual employees to seek redress in the event of unfair dismissal in a cost free jurisdiction before an independent tribunal. The organisations reject initiatives requiring casuals to have 12 months service before being able to access the Federal unfair dismissal jurisdiction.
22. As noted in para 8 above the organisations estimate that around 2.5% or 750 of their members are employed as casuals principally in those industries which also have a high incidence of small business activity.
23. The organisations would be prepared to accept a requirement for casuals to have three months regular employment with a reasonable expectation of continuance as a requirement for accessing the Federal unfair dismissal jurisdiction.

24. We thank you for the opportunity of presenting these views to the Committee.

Yours faithfully

BRUCE NADENBOUSCH
Director Industrial Relations APESMA
For & On Behalf of APESMA, POAV & MPA

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