



**INDUSTRY
TOURISM
RESOURCES**

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Mr John Carter
Secretary
Senate Employment, Workplace Relations
and Education Committee
Suite 1.61
Parliament House
CANBERRA ACT 2600

Dear Mr Carter

**SENATE INQUIRY INTO WORKPLACE RELATIONS AMENDMENT
(FAIR DISMISSALS) BILL 2002**

Thank you for your letter of 2 April 2002 inviting submissions to the Senate inquiry into the Workplace Relations Amendment (Fair Dismissals) Bill 2002, (the Bill). Unfair dismissal remains a significant issue for small businesses. The Office of Small Business recognises the importance of the Bill to the small business sector and appreciates the opportunity to make a contribution.

The Office of Small Business is located within the Department of Industry, Tourism and Resources. The Office of Small Business charter is to provide policy advice and support to the Government on small business issues. In this role, the Office of Small Business seeks improvements in the operating environment for small business to promote efficiency and employment growth.

The Office of Small Business is aware that the Department of Employment and Workplace Relations (DEWR), as the Department responsible for workplace relations policy, has made a separate submission to the Committee on the five Workplace Relations Amendment Bills currently before the Committee. The Office of Small Business fully endorses the analysis and conclusions set out in Part 2 of that submission dealing with the Workplace Relations Amendment (Fair Dismissals) Bill 2002. Consequently, we would be pleased to have a representative attend the Senate Committee hearing in conjunction with DEWR.

The Office of Small Business understands the needs of small business as we speak to small businesses and their representatives on a regular basis. While not conducting its own research on the impact of unfair dismissal laws, from its frequent contact with small business and their representatives, the Office of Small Business is conscious of the impediments the present laws are to creating employment.

Business perceptions of the unfair dismissal laws have been communicated through a number of consultative mechanisms that the Office of Small Business administers. The Small Business Consultative Committee (SBCC) was established in December 1998 to assist small business with the transition to a GST and it has functioned as a forum where small business issues could be brought to the attention of the Government directly through the Minister for Small Business. Attachment A provides details of the membership of the SBCC. At the 14 February 2002 meeting of the SBCC, one member (and small business owner) indicated that fear of the unfair dismissals legislation was the biggest complaint among small businesses in his region. He suggested that the legislation was responsible for the 'casualisation' of the workforce, with a lack of preparedness to put on full-time employees, and provided an example of a local firm that contracted all of its staff through a labour-hire firm only for the duration of a major contract. Another small business operator member echoed similar sentiments and confirmed that small businesses were unwilling to take on older, full-time staff.

The National Small Business Forum is the formal consultative mechanism between the Government and thirty-three peak industry and professional associations representing small business. It is hosted by the Minister for Small Business twice a year and is organised by the Office of Small Business. Attachment B provides a list of the members of the National Small Business Forum. The most recent meeting of the Forum was held on 15 February 2002. During the open question and answer session with the Minister, the Small Business Coalition (an informal group representing professional, business and industry associations with an interest in small business issues) raised the issue of unfair dismissal laws – seeking relief for small business from the onerous requirements.

During 2001, the former Minister for Small Business, the Hon Ian Macfarlane MP, engaged in a series of 'roundtable' consultations with small businesses throughout Australia. The roundtable consultations provided the Minister and the Department with an opportunity to hear first-hand from small business about issues affecting them. There were a total of 37 roundtable meetings in all States, many of them in rural and regional areas. These meetings involved almost 650 small business people, from a diverse range of sectors, including retail, hospitality, wholesale, manufacture, professional and personal services. At the meetings, unfair dismissals regularly featured in the top five issues of importance to small business owners and operators. It was, clearly, the number one workplace relations issue.

At most meetings there was at least one business person who had either had personal experience, or knew of someone who had personal experience with an unfair dismissal claim. In some cases businesses settled out of court to make the claimant go away. In several cases, businesses had spent over \$10 000 to successfully defend a case. This cost was in addition to time spent away from the business and the stress and uncertainty incurred. The Office of Small Business notes that statistical data on the number of federal unfair dismissal applications lodged with the Australian Industrial Registry does not necessarily reflect the total number of instances where employers are faced with unfair dismissal claims. As mentioned above, small businesses have informed the Government that they have opted to pay a cash settlement to a former employee rather than defend an unfounded claim of unfair dismissal. This is often referred to as 'go-away' money. Other businesses stated that, out of fear, they no longer hired any staff on an ongoing basis, preferring to have all their staff as contractors, so they did not leave themselves at risk of an unfair dismissal claim.

It has been the Office of Small Business' experience that small businesses are reluctant to be specifically identified and singled out as examples. However there is plenty of survey evidence to support the case that the present law unreasonably impedes small business.

For example, the recent CPA Australia Survey on Employment provides evidence that the unfair dismissal laws are resulting in the increased employment of casuals in the workforce, with 30 per cent of small businesses employing casuals to avoid an unfair dismissal case. Furthermore, over a quarter of small businesses surveyed were not confident that they knew how to dismiss staff under the laws. Attachment C provides additional information on recent surveys which covered unfair dismissal.

We note that several industry associations representing the small business sector will make separate submissions to the Committee, outlining their views of the legislation. Such associations include the Australian Chamber of Commerce and Industry, the Council of Small Business Organisations Australia and the National Farmers Federation.

The Office of Small Business draws the Committee's attention to paragraph 53 of Part 2 of the Department of Employment and Workplace Relations submission which provides examples of when legislation differentiates between small and larger businesses. Attachment D gives an extensive list of Australian legislative and administrative definitions of small business and was prepared in 2001 as part of a paper entitled *Definition of Small Business* by Professor Scott Holmes and Brian Gibson of the University of Newcastle for the Small Business Coalition.

I hope that this additional information will be of assistance to the Committee.

Yours sincerely

Sue Weston

Sue Weston
General Manager
Office of Small Business

24 April 2002

MEMBERS OF SMALL BUSINESS CONSULTATIVE COMMITTEE

Chairman

Mr Curt Rendall: Partner-Rendall Kelly, Chartered Accountants and former Deputy Chairman of the New Tax System Advisory Board. Current member of the Institute of Chartered Accountants Small and Medium Enterprises Committee, the Small Business Development Corporation of New South Wales and Telstra's Small Enterprise Consultative Council.

Members

Mr Gregory Hayes: Senior Partner - Hayes Knight, Accountants and Business Advisors. Chairman of CPA Australia's Small Business Centre of Excellence.

Mrs Ella Keenan: Small business owner/operator. Current Chair of the Council of Small Business Organisations of Australia (COSBOA), past National President of the Australian Federation of Business and Professional Women Inc.

Mrs Katherine Kelly: Partner in Boyce Chartered Accountants. Fellow of the Institute of Chartered Accountants in Australia.

Mr Nicholas Maio: Small business owner/operator. Board Member of the Italian Chamber of Commerce and Industry and former Board Member of the South Australian Restaurant and Catering Association.

Mr Neil Mann: Deputy Commissioner of Small Business, Australian Taxation Office.

Mr Rick Schultz: Business owner/operator.

Mr Lane Taylor: Principal in the CPA firm of L P R Taylor & Associates Pty Ltd. Member of the Taxation Institute of Australia and the National Taxation Association of Australia.

Dr Neil Warren: Associate Professor of Economics, Australian Taxation Studies Program, Faculty of Law, University of New South Wales.

Mrs Mary Wilson: Small business owner/operator. Director and Honorary Treasurer of the Mt Gravatt Training Centre.

MEMBERS OF THE NATIONAL SMALL BUSINESS FORUM

Australian Bankers Association

Australian Business Ltd

Australian Chamber of Commerce and Industry

Australian Industry Group

Australian Council of Building Design Professions Ltd

Australian Council of Businesswomen

Australian Council of Professions

Australian Electrical and Electronic Manufacturers' Association

Australian Federation of Business and Professional Women

Australian Hotels Association

Australian Institute of Management

Australian Retailers Association

Business Educators Australasia Inc

Business Enterprise Centres Australia Inc

CPA Australia

Council of Small Business Organisations of Australia

Federation of Automotive Products Manufacturers

Franchise Council of Australia

Housing Industry Association

Institute of Chartered Accountants

Institution of Engineers, Australia

Law Council of Australia

Master Builders Australia

Motor Trades Association of Australia

National Farmers' Federation

National Institute of Accountants

Real Estate Institute of Australia

Restaurant and Catering Australia

Small Business Coalition

Small Enterprise Association of Australia and New Zealand

The Pharmacy Guild of Australia

The Printing Industries Association of Australia

Victorian Employers Chamber of Commerce and Industry

ADDITIONAL SURVEY RESULTS

ACCI pre election survey (November 2001)	<ul style="list-style-type: none"> • survey of more than 2,500 firms • out of 63 issues - unfair dismissal ranked as the 5th most important for small businesses • frequency and complexity of changes to tax laws and the level of taxation ranked 1st • superannuation ranked 6th • energy costs ranked 8th • workers' compensation ranked 10th • the GST ranked at 17th
NRMA Local Business and Regional Affairs Survey undertaken in conjunction with the NSW State Chamber of Commerce (November 2001)	<ul style="list-style-type: none"> • respondents were asked what was the most important issue for the Federal Government to address on behalf of their businesses • unfair dismissal legislation was ranked 3rd (16 per cent) • complexity of the tax system was ranked 1st (33 per cent) • complexity and cost of government regulations was ranked 2nd (26 per cent)
CPA Australia survey on employment issues (March 2002)	<ul style="list-style-type: none"> • 28 per cent of small businesses felt they were not able to dismiss employees even if their business was struggling • 62 per cent of small businesses felt that the unfair dismissal laws required them to follow a complex process to dismiss staff • 30 per cent felt of small businesses that the employer always loses unfair dismissal cases • 27 per cent of small businesses felt that you couldn't dismiss a person even if they were caught stealing from you • 26 per cent of small businesses were not confident that they new how to dismiss someone under the laws

Attachment D: Selected Australian Legislative and Administrative Definitions

SELECTED AUSTRALIAN LEGISLATIVE AND ADMINISTRATIVE DEFINITIONS OF SMALL BUSINESS			
Legislation or Administrative Documentation	Assumed Purpose	Source Reference	Definition
Income Tax Assessment Act 1997 (ATO,2000)	General definition for provisions in the Act that provide exceptions or special rules for small business taxpayers. For example, Division 42, Depreciation of plant.	Subdivision 960-Q	SECT 960-335 You are a small business taxpayer for an income year if: (a) you carry on a business in that year; and (b) either: (i) your average turnover for that year is less than \$1,000,000 ; or (ii) you choose to recalculate that turnover for an income year before the 2001-02 income year under section 960-350 and it is less than \$1,000,000 as recalculated.
Income Tax Assessment Act 1997 (ATO, 2000)	Eligibility for Capital Gains Tax concessions (15 year exemption, 50% reduction, retirement concession, roll-over).	Subdivision 152-A	SECT 152-5 ...a limit of \$5 000 000 on the net value of assets that the business and related entities own ...
Income Tax Assessment Act 1997 (ATO, 2000)	Assist small businesses with unrealised net losses that would otherwise be prevented from using losses unless the company satisfies the same business test.	Subdivision 165-CD	SECT 165-115 ... special rules, directed at saving compliance costs, apply to exempt any company that has a net asset value of \$5 million or less at the time of change.

APPENDIX A (cont) – SELECTED AUSTRALIAN LEGISLATIVE AND ADMINISTRATIVE DEFINITIONS OF SMALL BUSINESS			
Legislation or Administrative Documentation	Assumed Purpose	Source Reference	Definition
Fringe Benefits Tax Assessment Act 1986 (ATO, 2000)	Exempt benefits related to small businesses and car parking	Division 13	Sect 58GA ... (b) The employer of the employee is not a public company (see subsection (3)), or a subsidiary of a public company (see subsection (3)), in relation to the day on which the benefit is provided; and (c) The employer is not a government body; and (d) The sum of the employer's ordinary income and statutory <u>income for the year</u> of income ending most recently before the start of the FBT year <u>is less than \$10 million</u> .
A New Tax System (Goods And Services Tax) Act 1999 (Scaleplus, 2000)	The registration turnover threshold	Division 23	SECT 23-15 ... registration turnover threshold (unless you are a non-profit body) is: (a) <u>\$50,000</u> ; or (b) such higher amount as the regulations specify.
A New Tax System (Goods And Services Tax) Act 1999 (Scaleplus, 2000)	Determination of one month tax period's applicability.	Division 27	SECT 27-15 ... tax period turnover threshold is: (a) <u>\$20 million</u> ; or (b) such other amount as the regulations specify.

APPENDIX A (cont) – SELECTED AUSTRALIAN LEGISLATIVE AND ADMINISTRATIVE DEFINITIONS OF SMALL BUSINESS			
Legislation or Administrative Documentation	Assumed Purpose	Source Reference	Definition
A New Tax System (Goods And Services Tax) Act 1999 (Scaleplus, 2000)	Choosing to account on a cash basis	Division 29	SECT 29-40 ... cash accounting turnover threshold is: (a) \$1,000,000 ; or (b) such higher amount as the regulations specify.
A New Tax System (Goods And Services Tax) Act 1999 (Scaleplus, 2000)	Requirement for electronic lodgment of GST returns	Division 31	SECT 31-25 ... electronic lodgment turnover threshold is: (a) \$20 million ; or (b) such higher amount as the regulations specify.
First Corporate Law Simplification Act 1995 (ALII, 2000)	Determination of financial reporting requirements imposed (based on the assumption that proprietary companies limited by shares [are] the most common type of company used by small business).	Schedule 3 – Small Business Guide	A company is classified as small for a financial year if it satisfies at least 2 of the following tests: - gross operating revenue of less than \$10 million for the year - gross assets of less than \$5 million at the end of the year - fewer than 50 employees at the end of the year. A company that does not satisfy at least 2 of these tests is classified as large.

APPENDIX A (cont) – SELECTED AUSTRALIAN LEGISLATIVE AND ADMINISTRATIVE DEFINITIONS OF SMALL BUSINESS			
Legislation or Administrative Documentation	Assumed Purpose	Source Reference	Definition
Privacy Amendment (Private Sector) Bill 2000 Explanatory Memorandum (Scaleplus, 2000)	Exemption to privacy legislation for the private sector.		A small business is defined as a business with an annual turnover of <u>\$3 million or less</u> . Annual turnover may be calculated in the same manner required under the GST legislation. This is to ensure that the Bill does not impose a new obligation on small business
Trade Practices Act 1974 (ALII, 2000)	Determining applicability of unconscionable conduct provisions for trade involving small business. [Note limits refer to single transactions].	SECT 51AC	(9) A reference in this section to the supply or possible supply of goods or services does not include a reference to the supply or possible supply of goods or services at a <u>price in excess of \$1,000,000</u> , or such higher amount as is prescribed. (10) A reference in this section to the acquisition or possible acquisition of goods or services does not include a reference to the acquisition or possible acquisition of goods or services at a <u>price in excess of \$1,000,000</u> , or such higher amount as is prescribed.
Australian Banking Industry Ombudsman Scheme (ABIO, 2000)	Eligibility for ombudsman support	Guidelines To The Terms Of Reference – 19A	The Ombudsman shall only consider (or continue to consider) a complaint made by a business applicant, if at the time of the act or omission giving rise to the complaint, the business applicant: (a) had an <u>annual turnover of \$1 million or less</u> ; and (b) was independently owned and managed.

APPENDIX A (cont) – SELECTED AUSTRALIAN LEGISLATIVE AND ADMINISTRATIVE DEFINITIONS OF SMALL BUSINESS			
Legislation or Administrative Documentation	Assumed Purpose	Source Reference	Definition
Austrade	Eligibility for export assistance		An annual <u>turnover of between \$300,000 and \$20 million.</u>
AusIndustry	R&D Start Program eligibility		Be a small to medium sized enterprise having a <u>turnover of less than \$50 million</u> in each of the last three years of income preceding the year of income in which the application is made. In determining whether an applicant is an SME applicant, the Board will include the turnover of a company with a controlling interest in the applicant in the turnover of the SME applicant.
(NSW) Small Business Development Corporation Act 1984 (ALII, 2000)	Eligibility for programs.	Sect 3	Small business means any business enterprise which, in the opinion of the Minister: (a) is a small business enterprise, (b) does not form part of a large business enterprise, and (c) is managed personally by at least one of the persons entitled to a share of any profits of the business enterprise.
NSW Small Business Training Bonus Scheme (NSW DET, 1999)	Eligibility for training assistance		The definition of small business used in this program is the following Australian Bureau of Statistics definition: Manufacturing organisations employing less than 100 people; Construction and service sector organisations employing less than 20 people; and Agricultural firms where the value of the agricultural operations is between \$20,000 and \$400,000. Small businesses also share a number of organisational characteristics. They are independently owned, they are financially controlled by the owner/manager and their operations are usually locally based.

