

Chapter 4

Findings and recommendations

4.1 The committee finds that there is no empirical evidence or research to support the Government's claim that exempting small business from unfair dismissal laws will create 77,000 jobs. The proposition at the heart of this argument is breathtaking for its lack of logic and empirical support. A review of the evidence shows conclusively that the claims made by the Government and employer groups are fuelled by misinformation and wishful thinking rather than objective appraisal of the facts. Accurate analysis of the unfair dismissal issue is complicated by the lack of authoritative data pertaining to almost all unfair dismissal matters. Data relating to financial and other costs associated with unfair dismissal claims and employers' knowledge of and adherence to principles of procedural fairness are examples of where the committee has had to rely on opinions and surveys of variable quality to arrive at a conclusion.

4.2 The committee strongly opposes the Fair Dismissal Reform Bill. The bill is unfair because it withdraws the protection of the law from employees based on the size of the business in which they work. The bill's primary purpose is to enable employers to dismiss workers *unfairly*. It provides that employees of small businesses may be dismissed in circumstances which a court would find to be unfair, but which leaves them with no redress. The committee cannot accept legislation which undermines the 'fair go all round' principle which is enshrined in the Workplace Relations Act. The key issue in this debate is not about jobs, as the Government claims. It is about what is fair and right for employers and workers. The committee believes it is not fair to give fewer rights to workers in small business than workers in larger enterprises. Nor is it right to deny essential protection to employees against rogue employers.

4.3 The committee believes that the bill is grounded in an ideological position which has little relevance to the real problems that face small businesses. Evidence to this inquiry showed conclusively that the decision of small business operators to hire and fire is influenced by a range of factors other than unfair dismissal, including the state and profitability of the business, taxation arrangements and general economic conditions. The committee believes strongly that the Government's legislation is not an appropriate response to the problems facing small businesses, including their negative perceptions of unfair dismissal laws. The committee believes that a more constructive approach would involve the Government making sensible procedural reforms to simplify and improve the unfair dismissal process and to reduce costs for small businesses.

Recommendation 1

The committee recommends to the Senate that the Workplace Relations Amendment (Fair Dismissal Reform) Bill 2004 be rejected.

Recommendation 2

The committee recommends that the Government work with small business, unions and peak industry bodies to make unfair dismissal laws more effective by reducing the procedural complexity and cost to small business of the current unfair dismissal process.

Recommendation 3

The committee recommends that the Government make no further changes to unfair dismissal laws until an independent review has been conducted by experts selected from employee and union groups, employer groups and academics. The committee recommends that:

- **the review examine the Government's policy on unfair dismissal and evidence used to support its legislation, relevant Senate committee reports which have addressed the issue of unfair dismissal, state government views and any other relevant sources; and**
- **findings of the review be presented to the Council of Australian Governments (COAG) with a request that it develop a set of common principles to guide future reform of unfair dismissal laws at the state and federal level.**

Senator Trish Crossin
Chair

Senator Andrew Murray