

# Submission

to

Senate Employment, Workplace Relations and Education  
References Committee

## **Inquiry into unfair dismissal laws**

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**Submitter:** Mr Ron Baker  
Director

**Organisation:** Australian National Organisation of the Unemployed

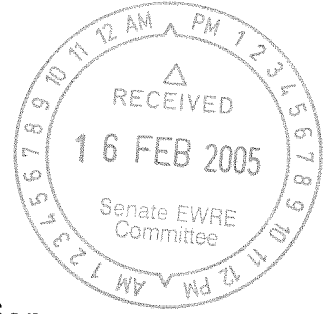
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## Submission

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Senate Employment, Workplace Relations and Education  
References Committee

## Inquiry into Unfair Dismissal Policy in the Small Business Sector

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**Submitter;** Ron Baker – Director

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AUSTRALIAN NATIONAL ORGANISATION  
of the UNEMPLOYED

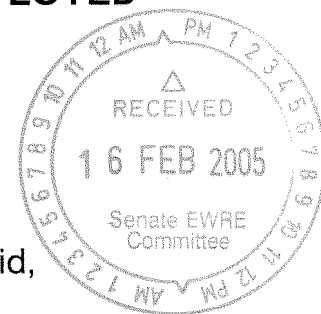
*Unemployed People.....*

*Speaking for themselves ..... Fighting for Their Rights.*

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# AUSTRALIAN NATIONAL ORGANISATION of the UNEMPLOYED

Founded in 2000, the ANOU is;



- ❖ A federation of un(der)employed people's organizations.
- ❖ Not for profit, unfunded, no source of income, operated by unpaid, unemployed volunteers.
- ❖ Neither aligned with nor opposed to any particular political or religious ideology.
- ❖ An advocacy concerned primarily with federal government policies, systems and practices. State issues are pursued by exception.
- ❖ We are not able to take up the cases of individuals.

## Mission statement:

- ❖ To defend the rights and advance the interests of Australians who are involuntarily unemployed, under-employed or unpaid.
- ❖ To work with all people of goodwill on shared interests and goals.
- ❖ To pursue the rights and protections guaranteed by international treaties, including;

Universal Declaration of Human Rights – 1948  
International Covenant on Economic, Social & Cultural rights – 1966  
International Labour Organisation (ILO) Conventions  
Universal Declaration on Volunteering

- ❖ To secure a seat at the table wherever national policy development or review impacts the lives of un(der)employed people and their families.
- ❖ To advance *the* **R.O.A.R.** principles of;

**R**ights – **O**bligations – **A**lternatives – **R**ewards

Full details of the ANOU's Charter available at  
[www.unempa.org](http://www.unempa.org)

## **Perspective:**

The Howard Government has presented it's Unfair Dismissal Laws Bill on forty one previous occasions. Each time the proposed legislation has been rejected by the Senate.

Since 1999, the Legislative Committee has conducted a total of five inquiries into unfair dismissal laws. The Terms of Reference for this latest Inquiry demonstrate that the five previous attempts have failed to produce the most basic information required to make an objective assessment of the government's planned legislation.

The government has not provided the details to justify or support it's Bill, and numerous Question Times in both houses have not discovered this information. It is hardly surprising that the Bill has been continually rejected. The govt's track record, and it's failure to provide facts and evidence to support it's Bill is good reason to be highly suspicious of the true motives behind what is a radical change to workplace relations.

This submission is based on the ANOU's understanding that the government's Bill proposes;

- ❖ Small businesses with 20 or less employees will be exempt from the provisions of current Unfair Dismissal legislation.
- ❖ Any changes passed into law will apply only to new employees of the subject small businesses.

## **About this submission:**

The ANOU's minimal resources do not allow for extensive research to discover new information or verify details provided particular sources. It is not possible for the ANOU to address the specific questions put by the Inquiries Terms of Reference. In any event, the government has an obligation to provide the answers to support it's proposed legislation.

Ongoing discussions with opposition parties, trade unions, and the welfare sector, confirms that those organisations are unaware of serious negative consequences for people who become unemployed under the conditions proposed by the government's Unfair Dismissal Bill. This submission seeks to alert the Senate Committee to those risks as well as other potential issues in the small business workplace.

## Increasing the risks from unemployment:

The government has introduced a range of punitive measures under the guise of “incentives” to move from welfare to work. The proposed changes to unfair dismissal laws will have a serious impact for sacked employees who move from work to welfare.

- ❖ The loss of a job for alleged misconduct is regarded as an Activity Test breach which reduces or withdraws Newstart or Youth Allowance payments.

<u>Incident</u>	<u>Benefit reduction</u>	<u>Effective fine *</u>
1 <sup>st</sup> breach	18% for 26 weeks	\$ 922
2 <sup>nd</sup> breach	24% for 26 weeks	\$ 1,228
3 <sup>rd</sup> breach	100% for 8 weeks	\$1,576

(\* based on Newstart – single adult - \$197 per week).

- ❖ Breaches are cumulative over a two year period, they remain on an individual’s record regardless of whether the individual is unemployed or has re-entered the workforce.

Therefore, an individual sacked for alleged misconduct is subjected to a breach penalty at the level determined by their history of the past two years.

- ❖ New claims for Newstart or Youth Allowance are subject to a non-payment period determined by the amount of severance pay and entitlements paid by the former employer.
- ❖ A worker sacked for alleged misconduct faces a double jeopardy to their social security payments. A waiting period dependent on severance pay and the imposition of a breach and fine which could mean no social security payments for eight weeks, from the date that the individual qualifies for their first benefit payment.
- ❖ Individuals up to age 49 who have been breached can have their payments restored to the full amount, and recover penalties already paid, if they rectify the transgression within a specified period.
- ❖ Job seekers age 50 to 64 can have their payments restored upon compliance but they are not able to recover any penalties already paid. The government has been unable, or unwilling to explain it’s rationale for the discrimination on the grounds of age.

- ❖ We are told that Centrelink “investigates” allegations of dismissal for alleged misconduct by contacting the employer and the job seeker.
- ❖ In the case of dismissal for alleged misconduct, job seekers are at the mercy of Centrelink and the former employer’s version of events. How is a sacked worker with a reduced social security payment, or no payment expected to defend themselves against allegations by an employer and decisions made by Centrelink?

### **Appeals against breaches;**

- ❖ The Centrelink appeals system has four stages which take many months to complete. This is the only option for job seekers age 50 and over to recover penalties, even when they have complied with the rules within the specified time frame.
- ❖ Employers are under no obligation to cooperate with Centrelink inquiries, and are unlikely to do so if they have sacked an employee unfairly.
- ❖ Centrelink has an inbuilt incentive to reject appeals in order to maintain the “savings” (revenue stream), from breach penalties.

### **The alleged need for changes;**

The Coalition claims that small business is reluctant to employ people through fear of unfair dismissal claims by sacked workers. The ANOU is unaware of any evidence to support or qualify this rhetoric. What sort of employer declines to employ sufficient staff required to maximise the potential of their business?

Perhaps these reluctant employers need to review their recruitment practices. How many small businesses adopt the “do it yourself” option without the HR skills and resources to conduct a professional process?

To what extent does the Job Network refer job applicants who prove to be unsuitable to employers’ needs? In fact, what percentage of small business operators actually source staff through the Job Network?

The government claims that small businesses are unable to afford the cost of defending themselves against an unfair dismissal action, claimed to be around \$3,500. Investing a lesser amount on professional recruitment services would be a more productive option. Most HR companies offer a replacement worker at no cost within a 3 months period, and a reduced cost after 6 months. And of course access to Job Network services are at no cost to employers.

### **Increased employment:**

The government claims that exempting small business from Unfair Dismissal laws will benefit the economy by creating 77,000 new jobs. What are these new jobs, full time, part time, casual, which areas and industries?

Since the Coalition came to office in 1996, unemployment has reduced from 9.6% to 5.1%. This 47% reduction in the official jobless rate has occurred under existing Unfair Dismissal and general industrial relations legislation.

The Prime Minister asserts that the proposed changes are needed to reduce unemployment to below 5 per cent. That objective requires just 10,000 new jobs, an average of just 10 placements per Job Network member. Hardly a reason to justify the radical changes proposed by the government.

The proposed changes are more likely to increase unemployment. Employers may be encouraged to reduce their staff numbers to twenty in order to exploit the exemption from Unfair Dismissal laws. The downsizing could be achieved by replacing a number of casuals with one full time worker, a reversal of current trends.

### **A two tier system:**

The government's proposal discriminates against some employees of small businesses, that is, workers employed after the introduction of new legislation. Newly hired workers will have less rights than existing employees in small and large businesses.

How long until big business stakes its claim to the same exemptions as small business? The government has shown itself willing to capitulate to the demands of powerful lobby groups, including significant political donors.

Exempting small business creates a breeding ground for discrimination, workplace bullying, sexual harassment, malicious sackings and reduced job security. How many employees would be willing to defend themselves or pursue official complaints with the threat of arbitrary dismissal hanging over their heads? Legal action is not likely to be a viable option to a person who has just lost their job and their income.

Under these conditions, the message to job seekers is think carefully before working for a small business employer. Because the government's proposal discriminates against new employees of small business, job seekers should have the right to refuse such work with incurring an Activity Test breach.

## **Discrimination and abuse of rights:**

The government's proposal treats new employees of small business differently to existing staff, and workers in big business. This is a human rights and equal opportunity issue and it should be challenged as such. The following are extracts from international treaties;

### **Universal Declaration of Human Rights – 1948.**

#### Article 7:

*All are equal before the law and are entitled without any discrimination, to equal protection of the law.*

#### Article 23:

*Everyone has the right to work to free choice of employment, to just and favourable conditions of work and to protection from unemployment.*

### **International Labour Organisation, Convention N; 111 – Discrimination (Employment & Occupation) – 1958.**

*To promote equality of opportunity and treatment. Member states having ratified the convention undertake to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with this policy.*

Former lawyers and trade union officials prevail in both houses. Is it too much to expect those elected representatives to summon the initiative and the backbone to pursue the Unfair Dismissal laws with the Human Rights & Equal Opportunity Commission and the Anti-Discrimination Commission? Apparently so.

Even though judgements and recommendations by HREOC and the ADC are not enforceable, findings critical of the govt's Bill would undermine it's authority.

## **About this Inquiry:**

The information and Terms of Reference provided by the Inquiry does not identify the Committee's Chairperson or it's membership. These details are fundamental to an open and accountable process.

- ❖ All federal politicians are required to declare their pecuniary interests, directorships, and possibly memberships. The details are recorded in a parliamentary register.
- ❖ Presumably, the register is intended to avoid or reduce the risk of private interests conflicting with, or compromising public duties and parliamentary responsibilities.



If that is the case, surely the conflict of interests test is applied to individuals involved in any policy decision making process, including membership of government committees, inquiries, taskforces.

- ❖ The Inquiry into Unfair Dismissal laws showcases the ANOU's concerns;
- ❖ Senators and MHRs with direct or indirect involvement with a small business and who stand to gain from the passing of the Bill, should not be eligible for membership of this particular Inquiry.

### **Voting on bills:**

The ANOU is not aware of the rules governing the rights and obligations of individual parliamentarians casting their vote in either chamber.

If an individual is not eligible for involvement with a particular issue, does the same conflict of interests allow them to vote on that same issue in the Parliament? If this is the case, any conflict of interests policy or guidelines are totally irrelevant, redundant, meaningless.

There may be cases where involvement with a small business does not create a conflict of interests. For example, a small family operated business, labour hire company or a company which employs only casual workers, have little or nothing to gain from the proposed changes to unfair dismissal laws.

- ❖ The ANOU has raised these concerns and presented it's views in submissions to many government inquiries since 2000.

### **In conclusion:**

On 1 July 2005, the government will control both houses of Parliament, the passage of legislation will become a rubber stamp exercise. It is extremely naïve to believe that an Inquiry due to report in mid June can, or will, have any influence to moderate the government's plan to deny particular workers their right to protection from arbitrary and unfair dismissal.

That task requires an immediate and co-ordinated campaign by opposition parties, trade unions and the welfare sector. And pigs might fly.