

Submission

to

Senate Employment, Workplace Relations and Education
References Committee

Inquiry into unfair dismissal laws

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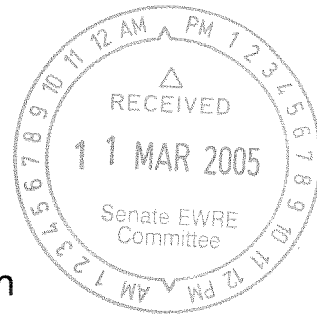
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Inquiry into Unfair Dismissal Policy in the Small Business Sector

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Job Watch



**The Employment
Rights Watchdog**



INTRODUCTION

Job Watch

Job Watch Inc is a community legal centre that specialises in employment law. It aims to improve the quality of workers' lives and strives for a fair and just working environment for all, especially the most disadvantaged workers in the community.

Job Watch was established in 1980 and is the only service of its type operating in Victoria. Its core activities are:

- The provision of advice, information and referral to Victorian workers via a free and confidential telephone advisory service¹.
- A community education program that includes publications, information via the Internet, and talks aimed at workers, students and other organisations.
- A legal casework service to disadvantaged workers and workers experiencing abuses of human rights.
- Research and policy advice on employment and industrial law issues.
- Advocacy on behalf of those workers in greatest need and disadvantage.

Job Watch is funded primarily by the Victorian State Government (the Department of State and Regional Development – Industrial Relations Victoria) and also receives funding from the Office of the Employment Advocate.

Job Watch's client base/constituency

Job Watch has a state-wide focus and services a broad range of Victorian workers. Each year we respond to approximately 19,000 telephone enquiries from workers in all industries, including the retail, property and business services, manufacturing, health and community services and accommodation and hospitality industries.

At Job Watch we maintain a database record of our callers, from which it is possible to identify the following key characteristics:

- a large proportion of our callers are employed in a business with less than 20² employees;
- unfair/unlawful dismissal is the most enquired about issue by our callers;³
- the majority of our callers are not members of unions;
- many of our callers are in disadvantaged bargaining positions because of their youth, sex, racial or ethnic origin, socio-economic status; or because of the potential for exploitation due to the nature of the employment arrangement.

JOB WATCH'S SUBMISSION AND THE COMMITTEE'S TERMS OF REFERENCE

1. Job Watch confirms that the aim of this Inquiry is to analyse "general principles and policy underlying the regulation of small business

¹The Job Watch advice service has 11 incoming phone lines, including a designated 1800 telephone number which prioritises calls from rural and remote areas of Victoria.

² During the 2003-04 financial year, 45.4% of our callers were employed in a business with less than 20 employees.

³ During the 2003-04 financial year, 19.9% of our callers specifically enquired about unfair/unlawful dismissal.

employment.”⁴ In light of this, the focus of Job Watch’s submission is on clause 1(b) of the Committee’s Terms of Reference, being:

“to recommend policies, procedures and mechanisms that could be established to reduce the perceived negative impacts that unfair dismissal laws may have on employers, without adversely affecting the rights of employees.”

2. Job Watch requests that, in making its recommendations, the Committee be mindful of the inevitably detrimental impact that a statutory exemption for small business from unfair dismissal laws will have on significant numbers of Australian workers. We consider that all workers are entitled to equal and fair treatment, regardless of their employers’ business size. We are of the firm view that any promotion of a two tiered system of employment rights, where an entire group of workers is barred from seeking any legal redress in relation to unfair dismissal solely because of their employers’ business size, is unjust. We request that the Committee adopt the same view and formulate its recommendations accordingly.
3. We consider that the *Workplace Relations Act 1996* already contains a number of provisions which act as safeguards against disproportionately onerous unfair dismissal laws that are applicable to small businesses. These include, for example:
 - the requirement that the AIRC must have regard to “the degree to which the size of the employer’s undertaking... would be likely to impact on the procedures followed in effecting the termination” (section 170CG(3)(da)); and
 - the requirement that the AIRC must have regard to “the degree to which the absence of dedicated human resource management specialists or expertise in the undertaking... would be likely to impact on the procedures followed in effecting the termination” (section 170CG(3)(db)).

We strongly maintain that a general small business exemption from the unfair dismissal laws is unwarranted. We reject the suggestion that such an exemption might be required “to reduce the burden of unfairness on small business”⁵. On the contrary, we consider that, if implemented, a small business unfair dismissal exemption would itself be harsh, unjust and unreasonable in its impact on thousands of Australian workers.

4. Any recommendation to exempt small business from unfair dismissal laws will not, in Job Watch’s view, achieve the necessary balance between the interests of small businesses on the one hand and employees on the other. Rather, the blanket exclusion of a whole category of employees from unfair dismissal laws will disadvantage large numbers of workers. It will also

⁴ Information about the Inquiry, available on the internet at:
www.apf.gov.au/Senate/committee/ee_ctte/unfair_dismissal/info.htm

⁵ Employment, Workplace Relations and Education Legislation Committee, Report on the Provisions of the *Workplace Relations Amendment (Termination of Employment) Bill 2002*, March 2003, Majority Report, page 9, paragraph 29.

adversely impact on small business by encouraging, perhaps inadvertently, high calibre workers to seek employment with larger businesses.

5. Nor is it likely that any such recommendation, if implemented, will single-handedly achieve the desired outcome of employment growth across Australia. Accordingly, Job Watch requests that the Committee critically evaluates the available evidence regarding the relationship between unfair dismissal laws and job growth in the Australian small business sector. We further request that the Committee consider what possible alternatives to a statutory exemption to unfair dismissal laws might practically assist small business owners and foster economic growth without adversely affecting employees.

Job Watch would be pleased to meet with members of the Committee to discuss any matters which are raised in this submission or which may be of interest to the Committee for the purpose of this Inquiry.