

Submission

to

Senate Employment, Workplace Relations and Education
References Committee

Inquiry into unfair dismissal laws

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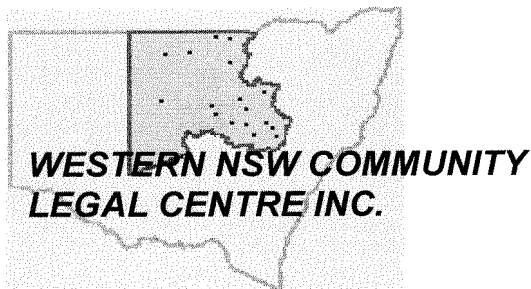
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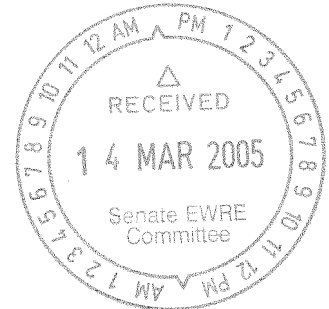


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Re – Inquiry into Unfair Dismissal Policy in the Small Business Sector

These are our written submissions in relation to the above inquiry.

Background

The Western NSW Community Legal Centre is an independent community organisation that provides free legal advice, community education and law reform to Western NSW.

The most common, but by no means the only areas of law in which the service assists are Family Law, Domestic Violence, Child Support, Child Protection, Credit and Debt, Discrimination, Victims' Compensation, Social Security and Employment.

The Centre has a Women's Outreach Service along with the Generalist Legal Service. The Centre also receives specific funding from the Office of Employment Advocate under its Community Partnership Program which enables the Centre to employ an additional part-time solicitor to provide assistance to disadvantaged workers.

Response

The reintroduction of the ironically named *Fair Dismissal Bill* brings into the spotlight, once again, the impact that federal unfair dismissal laws have on small business. This theme has constantly featured on the political agenda and has now resurfaced with shiny new supporting facts and figures.

The Howard Government has portrayed current employment laws as an onerous burden on small business to the extent that it alleges that the capacity to employ is reduced. Particular attention has been paid to a supposed correlation between unfair dismissal legislation and employment rates, specifically that the total cost of unfair dismissal is sufficient to deter small and medium businesses from taking on more staff.

The Government has made their job creation theory very public and have announced that 77,000 jobs will be created as a direct result of the loosening of unfair dismissal laws. However, the empirical evidence that the Howard Government is relying on to support this claim may be misleading.

The job creation theory is based on a report by the Melbourne Institute of Technology that claims existing legislative provisions cost small and medium-sized enterprises at least \$1.3 billion per annum in compliance and are responsible for the loss of 77,000 Australian jobs.¹

What the Government has failed to promote is that the report was a government commissioned report and the results of the study appear to be based on an opinion poll rather than evidence.² The government has neglected to publicise the fact that the job creation theory is based on responses from less than 1% of the 1800 respondents to this survey. This is hardly a solid base on which to change laws affecting up to 2.8 million employees of small business around Australia.³

To further discredit the job creation theory, a recent full bench Federal Court case⁴ examined the relationship between unfair dismissal and its correlation to small business and employment growth was examined. The chief expert witness for the Government, **Mark Wooden, admitted that he knew of no empirical evidence to support the view that unfair dismissal laws had an adverse effect on job creation.**

In the decision that followed, a unanimous Full Bench of the Federal Court ruled: "In the absence of any evidence about the matter, it seems to us the suggestion of a relationship between unfair dismissal laws and employment inhibition is unproven."⁵

Since that decision there still appears to be little support for the job creation theory. In fact, of the limited evidence that does exist, the theory is further discredited. In the 1990s when small business employment growth in Australia was at its strongest and above the average of other businesses (3.6 per cent average annual growth), federal unfair dismissal laws were more protective than they are today.

ABS statistics from 1999 show, that regardless of several changes in unfair dismissal laws between 1983 and 1997, the small business sector had higher average annual growth in employment than for other businesses⁶.

Again, if we look at statistics that are available, the actual impact that federal unfair dismissal laws have on small businesses are minimal for the following reasons:

- Less than 0.3% of small businesses experience federal unfair dismissal claims annually. (calculation using ABS and DEWRSB data 1997-2001)

¹ Available at: <http://www.onlineopinion.com.au/view.asp?article=2943>

² Available at: <http://www.smh.com.au/news/Opinion/This-is-just-the-job-but-on-the-other-hand-/2004/11/02/1099362146852.html>

³ Available at : http://www.democrats.org.au/news/?press_id=2205&display=1

⁴ *Hamzy v Tricon International Restaurants trading as KFC* [2001] FCA 1589, 16 Nov 2001

⁵ *Hamzy v Tricon International Restaurants trading as KFC* [2001] FCA 1589, 16 Nov 2001

⁶ AWIRS 95, Senate Employment Committee Opposition Minority Report, Feb 1999 available at www.ecom.unimelb.edu.au/iaesrwww/wp/wp99n19.pdf

- The average time from lodgement of a claim to finalisation of conciliation is 53 days. (AIRC Annual Report 2000-01)
- People can represent themselves in the AIRC and lawyers are not required.

The Howard Government, it would seem, have based their job creation theory on evidence that is questionable at best and misleading at worst. In addition, the Government has failed to address what would seem to be the common sense theory, that employment growth in small business is driven by increasing demand, not the degree of difficulty of sacking people.

Further, while the government has been preoccupied with promoting the job creation theory, they have neglected to discuss a significant issue regarding the effect that the Amendment Bill will have on people who are employed in businesses who have less than 20 staff.

Many of these workers are casual employees. Typically casual workers are predominantly women, and young people under the age of 34. They are low-income earners working in low level skill industries. Many are non-unionists⁷. These employees are some of the more disadvantaged workers in the country. In practice, the proposed laws will further erode their rights and create systematic disadvantage to a group that is already disadvantaged.

We must have fair and accessible unfair dismissal laws. The *Workplace Relations Amendment (Fair Dismissal) Bill* has been repeatedly rejected because the amendments are bad policy. However, given the current political environment, we will soon have a senate that is not hostile and it appears that it is only a matter of time before the previously rejected bad policy becomes law.

The Government should be focussing on equal treatment for all Australian workers, so that we all have the opportunity of a 'fair go', not trying to penalise workers because they are able to obtain employment in a small business.

⁷ Available at: http://www.awu.net.au/national/speeches/1042594647_2128.html