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JUSTIFYING UNFAIR DISMISSAL REFORM: A REVIEW OF THE EVIDENCE

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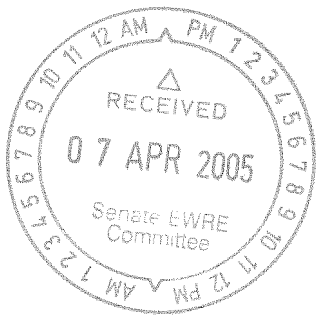

ABSTRACT

Exemption of small business from the federal 'unfair dismissal' laws has been on the Coalition Government's agenda since 1996 and is about to be finally realised after July 2005, when it gains control of the Senate. This paper examines the justification for such reform by analysing the Government's evidence for its assertion that it inhibits job growth in the small business sector, detailing the incidence of 'unfair dismissals' generally and outlining what small business has said about 'unfair dismissal' legislation and process by an examination of recent research on this issue. The paper also looks briefly at the practical process and the personal human drama associated with 'unfair dismissal'. This is set in the national and international context of Australia's ILO obligations. The paper concludes that the justification used by the Government is not sustained by the evidence and indeed suggests that there is some evidence that job growth resulting from the reform might be negative and argues that future research is required to monitor the effects of the reform.

INTRODUCTION

The objective of this paper is simple: to evaluate the federal government's justification for the exemption of small businesses from the operation of unfair dismissal legislation in the light of all recent research studies. In doing this the paper will examine the arguments put forward by the government in support of its job growth claims and provide the critique by a number of authors of the research on which the government relies. The incidence of unfair dismissal claims is outlined by an examination of AIRC data, including broad outcomes of the claims. The views of small regional businesses are revealed by looking at the results of two regional small business surveys, including one which specifically focused on the issue of small business unfair dismissal incidence and exemption. Additionally, the results of an industry specific survey about unfair dismissal costs and perceptions are also provided. Finally, some qualitative research into the complexity of the processes used to resolve unfair dismissal claims will be utilised to show that the governments arguments that the process is 'cumbersome' and small business operators have to 'become experts on employment law' are not sustained. (Federal Government Media Release 29 October 2003). To set the debate into the international context of Australia's ILO obligations, the paper will begin with a brief history of 'unfair dismissal' legislation in Australia.

INTERNATIONAL AND NATIONAL CONTEXT TO CURRENT UNFAIR DISMISSAL LEGISLATION

The *Termination of Employment at the initiative of the Employer* ILO Convention No. 158 (1982) has significantly influenced many legislatures throughout the world. It has placed restrictions on the freedom of the parties to regulate the terms of employment thereby placing employees in a better position than had previously existed at common

law. (Mahomed, 2002). This Convention has led to legislation in Britain (*Employment Rights Act 1996)*, New Zealand (*Employment Relations Act 2000)* and Canada (*Canadian Labour Code RSC 1985)* to name but a few. In Australia, the Federal Government has had constitutional limitations in regard to legislation in this area until relatively recently, with the argument being that the Australian Industrial Relations Commission (AIRC) did not have the jurisdiction to order remedies for unfair dismissal. High Court decisions (*Ranger Uranium Mines case (1987), 163 C.L.R. 656, Fruehauf Trailers case (1988), AILR No. 426* and *Wooldumpers case (1989), AILR No. 54*) in recent years challenged this perception and these, together with the High Court's decision in the *Tasmanian Dams case 1983, (158 C.L.R. 1),* which made it clear that the Foreign Affairs and Corporations powers of the Constitution could form the basis of domestic legislation, led to the enactment of the *Industrial Relations Reform Act 1993.* This Act for the first time, in the federal jurisdiction, legislated for relief from unfair dismissal for employees, subject to a certain category of exclusions. So, it was not until the 1993 Act that the Federal government complied with ILO Convention 158 in the federal arena.

The 1993 Federal provisions made it unlawful to dismiss an employee unless there was a valid reason connected with the employee's capacity or conduct or based on the operational requirements of the undertaking, establishment or service; and a reason was not valid if the termination was harsh, unjust or unreasonable (Sect. 170DE). The employer bore the onus of establishing a valid reason for termination; the onus then shifted to the employee to show that the dismissal was harsh, unjust or unreasonable (Sect. 170EDA). Further, an employee could not be dismissed without first being given the opportunity of defending the allegations unless the employer could not reasonably be expected to give the employee that opportunity (Sect

170DC). All applications for unlawful terminations went to the AIRC for conciliation and for arbitration by consent of the parties. Applications not settled in conciliation and not arbitrated by consent by the AIRC were sent to the newly established Industrial Relations Court of Australia, which had jurisdiction to make orders reinstating a dismissed employee and providing compensation either in addition to reinstatement or alternatively to it (Sect. 170EE). An application to the Court was limited to persons employed under a federal award or if award free earning not more than $60,000 (adjusted annually for inflation) (Sects 170CD and 170 EA). The cap on compensation was a maximum of 6 months salary for those employed under a federal award or $30,000 (adjusted annually for inflation) for non-award employees (Sect. 170EE). The constitutional validity of the 1993 termination of employment provisions was challenged in the High Court and their validity was substantially upheld (*Victoria v Commonwealth [Industrial Relations Act case] (1996) 187 CLR 416)*. The High Court held that it was a valid exercise of the Commonwealth's external affairs power.

The *Workplace Relations Act 1996* abolished the Industrial Relations Court of Australia but retained most of the remaining provisions, including the exclusions contained in the 1993 Act, which mirrored the exclusions in the ILO convention. Section 170 CC (e) (ii) is the potential small business exclusion, but it appears that in practice the AIRC's application of this exclusion did not meet the Government's intention and hence the Government's attempts at legislation to exempt small business (Pittard, 2002). The States' unfair dismissal provisions have the same exclusions, have the same application fee ($50) to make a claim and the same time provisions for making a claim as the federal system.

The essential difference between the provisions of the 1993 Act and the 1996 Act was that the 1993 Act provided for two criteria that could lead to the finding that the dismissal was 'unfair' and the employee could succeed by establishing either of the criteria, while the 1996 Act used the 'a fair go all round' principle. The two criteria were, firstly, that there had to be a valid reason for the dismissal and that the reason was not valid if the dismissal was harsh, unjust or unreasonable and, secondly, the process of dismissal had to be procedurally fair. The 'a fair go all round' principle of the 1996 Act attempted to ensure that in all aspects of the dismissal both the employee and the employer were accorded a 'fair go'. The 'a fair go all round' principle came from the case *Re Loty v Australian Workers' Union 1971 AR (NSW) 95* and was a principle that had essentially been adopted in the State jurisdictions, particularly in NSW. The effect of the changes brought about by the 1996 Act clearly made it easier for employers to defend Federal unfair dismissal claims. The use of the 'a fair go all round' principle aligned the federal legislation with the State legislation so that the process in both systems is now essentially the same.

THE GOVERNMENT'S ARGUMENTS FOR CHANGE TO THE UNFAIR DISMISSAL LEGISLATION

Since 1993 the Coalition parties have argued that the unfair dismissal provisions of the *Industrial Relations Reform Act 1993* have had a negative impact on small business. However, despite winning the 1996 election and subsequently replacing the 1993 Act with the *Workplace Relations Act 1996,* the Coalition was unable to remove existing unfair dismissal provisions due to the opposition of the Senate. Consequently, Peter Reith, then Minister responsible for industrial relations, introduced the *Workplace Relations Amendment (Unfair Dismissals) Bill* in 1997 and again in 1998, arguing on each occasion that unfair dismissal provisions prevented small businesses

from employing more workers. To support this claim Reith cited studies conducted by the National Institute of Labour Studies (Harding and Wooden, 1997) and the Yellow Pages Small Business Index (1998). However, Waring and De Ruyter (1999) have very clearly pointed out, neither of these studies actually showed what Reith claimed. The 1997 NILS survey found that 'size of firm was not statistically significant in explaining the firm's reported attitude towards unfair dismissal laws' (Harding and Wooden 1997, Appendix B). The Minister was therefore not justified in claiming that the NILS report lends support to excluding small businesses from unfair dismissal law (Waring and De Ruyter, 1999). The Yellow Pages Small Business Index (1998) showed that, though 59% of small business proprietors believed that there were barriers to employing new employees, unfair dismissal legislation did not rate a specific mention. Again this survey did not support the Minister's claims. Notwithstanding the Senate's hostility and the criticism of its supporting evidence the Coalition government persisted in its attempts to repeal the unfair dismissal provisions until in March 2003, Tony Abbott, then the Minister responsible, berated the Senate for its obstinacy in rejecting the bill for, what he claimed was the 27th time (Hansard. House of Representatives 6 March 2003). In his effort to gain Senate support he claimed unfair dismissal laws 'cost' the Australian economy 50,000 jobs (Hansard. House of Representatives 21 February 2002). This figure was based on an argument made by Kayoko Tsumori (2002) which cited surveys conducted by the ACCI (2001) and by the CPA (2002). While both these surveys made interesting if inconclusive findings the use made of them by Tsumori is problematic. The ACCI study suggested only that the majority of small businesses 'might' have hired more staff while the CPA study found that only 5% of respondents felt that unfair dismissal laws were an impediment to the hiring of new staff. In acknowledging the perception

of respondents that this was a relatively unimportant issue, Tsumori (2002: 5) nevertheless extrapolated that 'if only 5% of small businesses employed just one extra person, over 50,000 jobs would have been created.' One leading small business academic researcher has shown that even the most basic analysis of employment and labour market growth statistics throws doubt on the simplicity of Tsumori's assertions (Barrett 2003). An implied criticism was also made by the CPA (2003) in a study into small business policy development, when it concluded that policies seem to be made in the 'absence of empirical evidence and research to support and evaluate policy positions'. In the case *Hamzy v Tricon International Restaurants t/as KFC* in which Professor Mark Wooden gave expert evidence on the link between unfair dismissal laws and employment growth, the Full Court of the Federal Court concluded that: "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" (*Hamzy* (2001) at 70). Tsumori (2002) also states that employment protection deters both job destruction and job creation. Job destruction, it is argued, is inhibited by locking in employees in unsuitable jobs because employers cannot fire them and employees will not leave to go to more suitable jobs and job creation is inhibited because employers are reluctant to hire because they cannot dismiss. The argument by Tsumori (2002) does not take into account exclusions for employees on probation, fixed term or specific task contracts and casual employees, the requirement for the AIRC to take into account the size of the business nor the fact that unincorporated business is not covered by the legislation. Tsumori's (2002) paper further asserts that, although the vast majority of unfair dismissal cases are settled at conciliation, the outcomes of cases that are arbitrated generally favour the employee. This claim is quite misleading and is shown to be so in the next section on the incidence of unfair

dismissal claims. The government's argument over this issue broadened a little during 2004 when Minister Kevin Andrews expressed the view that the procedures used to resolve unfair dismissals were 'cumbersome' and by implication too complex for the micro business owner/operator. In his view the complexity of the law and procedures demanded that business operators 'become experts on employment law' (Federal Government Media Release 29 Oct 2003). This assertion is not sustained in the sections that follow.

THE INCIDENCE OF UNFAIR DISMISSAL CLAIMS

The AIRC is still responsible for unfair dismissal claims in the federal sphere of industrial relations and its Annual Reports provides significant information on the extent of the problem of unfair dismissals. They provide detail on the cases handled by the AIRC in each year and how many claims are settled before conciliation, by conciliation or by arbitration or other means. The AIRC does not, however, provide information on the nature of the settlement terms although some estimates have been calculated in a large regional study (Robbins & Voll 2004) and will be examined below.

According to the Annual Report 2003 - 2004 of the AIRC the number of unfair dismissal claims brought before it in this year was 7,044. In contrast to the total number of employees covered by the federal system of industrial relations this would hardly suggest an enormous problem. Furthermore, there is no evidence to suggest the number of claims or the proportion of the workforce affected is increasing. According to the AIRC there have been a total of 56,755 claims lodged with the AIRC since January 1997 and up to June 2004 and the annual number has been consistent. This means that on average only 7,567 claims are brought before the AIRC each year. Although the AIRC's Annual Reports do not distinguish between large and small

businesses this number of claims does not suggest much of a problem for either the small or big business sectors. In fact, if all of the claims lodged were against small businesses this would mean less than 1 percent of all small businesses were directly affected. It is hard to see how less than 8,000 formal claims in the federal system can be interpreted as a harbinger of an alarming problem. There is no evidence that the number of formal claims handled by the AIRC should alarm anyone in an economy the size of Australia's.

Another indicator of the seriousness or otherwise of unfair dismissals in an economy must be the manner in which claims have been dealt with by the AIRC. The government's argument has cited the complexity and cumbersome nature of the processes of settlement as a problem to small businesses (Federal Government Media Release CCH 29 Oct 2003) but this is not borne out by the figures provided in the AIRC Annual Reports. Since 1997 19% of all claims before the AIRC were settled before conciliation and 55% at conciliation. Settlement before any form of hearing can hardly be described as complex while conciliation itself, as the study by Voll (2005) indicates, is not particularly cumbersome or complex. Indeed, as a procedure of dispute settlement, the non-legalistic nature of conciliation would be reasonably familiar to most business operators. It would be certainly much less demanding in complexity and expensive formality than a civil law court, which Abbott claimed would be the alternative process for resolving unfair dismissals under his government's exemption proposal (Hansard. House of Representatives 21 February 2003). The government's claim that current unfair dismissal procedures demand small business operators 'become experts on employment law' (Federal Government Media Release CCH 29 Oct 2003) also seems exaggerated given the simplicity of argument found by Voll (2005) or given the complexity of the many other regulations, such as

the GST, with which small business must conform (CPA 2003; Petzke & Murphy 2002).

Though an arbitration hearing in an unfair dismissal case can be considerably more complex and demanding, arbitration is rare. In only about 6% of cases in 2003 - 2004 did the claim progress to arbitration (AIRC Annual Report 2003/4). An examination of the outcome of these arbitrated cases is also revealing. In 429 cases arbitrated on in 2003-2004 only 84 decisions imposed payment-in-lieu on the employer, 22 decisions imposed reinstatement, 77 cases were dismissed because they were out of time, 129 cases were dismissed grounds of jurisdiction while 117 cases were dismissed on merit. Arbitral proceedings are clearly not stacked against employers with employees being successful to some degree in only 25% of cases. Another useful measure of the impact of this issue would be the level of compensation to employees and/or procedural costs. These do not form part of the AIRC reporting, but Robbins and Voll (2004) have made estimates of the costs incurred by small businesses in unfair dismissal cases.

In summary, the AIRC data on unfair dismissal claims makes it clear than there are not a large number of claims, conciliation revolves almost 75% of all claims while the more complex process, arbitration occurs in only 6% of claims. In addition, the results achieved at arbitration are much more often in favour of employers than employees. A limitation of the AIRC material for the purpose of this paper is that there is no small business-specific statistics. To evaluate the necessity of exempting small businesses, therefore requires the generation of quantitative data that offers insight into the experiences and attitudes of small business operators themselves. This is provided in the following section.

WHAT DOES SMALL BUSINESS SAY ABOUT UNFAIR DISMISSAL LAW?

As stated earlier, there has been very little research into how the small business sector views the current unfair dismissal legislation or processes (see ACCI 2001; CPA 2002). The most detailed research into small business attitudes to the legislation comes from the Robbins and Voll (2004) survey into regional small business conducted in 2003. This survey contacted 2,700 small businesses by telephone in the Albury-Wodonga region and resulted in a response from 594 regional small businesses to an extensive 57 question survey. The survey asked the respondents about their knowledge of the current unfair dismissal legislation, the number of employees that they had terminated in the last 5 years, the number of unfair dismissal claims they had in the same period, where the claims were lodged, the resources that they had used (both time and money) on these claims and their level of satisfaction with the outcomes of these claims. They were also asked how fair the current unfair dismissal legislation is for small business and whether they thought that small business should be exempt from the current legislation. Finally, they were asked what the most important factor was that influenced their decision to hire or not to hire extra staff.

The results of this survey showed that about 80% of respondents had some knowledge of the legislation, 40% of businesses had formal procedures for the termination of employees but only 17% had dismissed any employees in the past five years. Of those who had dismissed employees, only 17% were subsequently confronted with an unfair dismissal claim, which represented only 2.9% of all respondents. The majority of employers (53%) represented themselves in the proceedings and 60% of respondents were satisfied with the outcomes of the process. In contrast, more than 97% of the total small business respondents had no first hand

experience of an unfair dismissal claim and this would help explain why 48% of total respondents thought that the current legislation was unfair to small business, with 33% unsure and 16% thinking that the legislation was fair. On the other hand, despite the high percentage who perceived the legislation as unfair, 37% thought that small business should be exempt from the legislation while 38% thought that they should not. In other words, while nearly half thought the legislation unfair there was no clear support for the exemption of small business. Finally, the most important factor that influenced their decision to hire or not to hire new staff was workload/turnover (49%) followed by cost/viability of the business (15%) and getting the right person (13%). In keeping with the CPA results, this regional survey found unfair dismissal legislation was a factor for 5.5% of respondents.

The survey also asked respondents to estimate the costs of the unfair dismissal process in terms of time, compensation and other costs. For those who had dealt with an unfair dismissal claim, answers on time commitments ranged from 10 hours to 500 hours over the past five years although the median was 15 hours. The cost of compensation to employees ranged from $0 to $5,000 with the median being $2,000 over the past 5 years. In terms of other costs, answers ranged from $200 to $10,000 with the median cost being $1,000 over the last 5 years. There is no evidence from these results that unfair dismissals are a financial burden on small businesses. Indeed 60% of the respondents to these answers were happy with the outcomes achieved and costs incurred.

Another recent survey (Chalk, 2004) of a sample of Motor Traders Association (MTA) members asked the respondents for their views on exemption of small businesses (less than 20 employees) from unfair dismissal laws, the costs of compliance and the cost of unfair dismissal claims. The sample consisted of 76% of

employers with 1 -20 employees and 22% with more than 20 employees. 21% of respondents had experienced an unfair dismissal claim in the past 5years and of those claims 18% were settled prior to conciliation, 68% were settled at conciliation and 14% were arbitrated. 67% of respondents settled on terms that they had expected, 25% settled on terms worse than they had expected and 8% settled on terms better than they had expected. However the most interesting aspect of the survey was an estimation of possible job growth in this employment sector. While 39% of respondents stated that they would be inclined to employ more staff if small business was exempted, 54% of respondents stated that they would keep their staff levels under the exemption threshold and while this would not be significant for businesses with low number of employees (10 or less), 30% of these respondents were larger businesses employing more than 20 employees. The conclusion drawn as a result was that a small business exemption may not generate more jobs overall because of the potential job destruction involved in trying to achieve and stay under the 20 employee threshold.

A final piece of quantitative research which adds insight to the issue of small business and unfair dismissal arose from a project focused on a quite different purpose. In 2004 a survey of employment in the Albury/Wodonga region generated insight into factors which impacted on the decision of employers to employ staff (Robbins, Murphy & Petzke 2004). From the 1,354 responses to this aspect of the survey questionnaire it was found that the three most important concerns held by businesses which impacted on employment were, Business Operating Issues, Government Regulation and Staffing. Operating issues were identified by 27% of respondents and these included such things as cash flow, demand, suppliers, transport etc. Regulation by government was identified as the major issue by 22% of

respondents and they specifically cited concern over compliance with GST, occupational health and safety and licensing arrangements. Staffing was a broad issue identified by 18% of respondents but the issues covered by this included level of wages, training and, in the vast majority of responses, concern over recruitment of qualified staff. Not one business out of 1,354 respondents identified unfair dismissal laws as an issue of concern. Indeed, the most common staffing problem was how to attract and retain staff not to dismiss them. It is argued here that the absence of any reference to unfair dismissal law by any of these survey respondents should be given greater significance because this was not a survey about unfair dismissal. Any research project which is explicitly concerned with unfair dismissal will to some extent heighten sensitivity toward that issue. In other words there will be a 'Hawthorne' effect (Cooper & Schindler 2003). Given the publicity surrounding the government's concern regarding the impact of unfair dismissal laws on small businesses it seems curious that, when left to their own assessment, small business operators did not identify this issue.

THE UNFAIR DISMISSAL PROCESS

Much has been said about the nature of the process involved in the resolution of an unfair dismissal claim and particular emphasis has been placed on the difficulties that this presents to small business. In this section, the discussion will draw on the qualitative analysis of a number of case studies examined by Voll (2005). The qualitative nature of this research contrasts and compliments the preceding quantitative analysis and underscores the point that an unfair dismissal claim has a very real human dimension. The case studies conducted by Voll come from actual cases which arose and were dealt with in regional Australia, but space does not allow examples to be shown here. They are particularly useful in illustrating the sort of

unfair dismissal claims that are commonly made, the jurisdictional problems that may arise and the outcomes that result. Although all of the cases examined by Voll involved unfair dismissal claims conducted in the NSW jurisdiction under the provisions of the *NSW Industrial Relations Act 1996* the point has already been well established that procedurally (and in virtually every other way) NSW and the federal systems are identical.

Voll (2005) makes a number of broad observations from his case studies which should be noted. Employees do not automatically lodge unfair dismissal claims when they are dismissed. The reasons for this vary but include lack of knowledge about the system, a sense of powerlessness or even acceptance of the reasons for the dismissal. Regionally located small business employees find it quite difficult to obtain good advice about dismissal because generally, the only avenues for this sort of advice are unions (if the employee is a member) or a solicitor. The latter is usually too expensive for the average employee, especially if there is more than one hearing involved. The employees in the case studies examined by Voll were not union members and this, given the low level of unionisation in the small regional business sector, is an extremely common situation (Robbins & Voll, 2002). The outcomes in unfair dismissal cases generally favour employers. The level of compensation awarded is usually relatively small while few employees are reinstated, despite this being their major objective in most cases. The reasons for dismissing employees are varied and will not simply be a reflection of the honesty or productiveness of an individual employee. Voll found that dismissal was occasioned by motives as varied as wanting to switch a new person into the job, to reduce staffing levels, to avoid meeting legal employment obligations or simply personal whim. In all of the cases examined by Voll, proper disciplinary and dismissal procedures were not followed,

even though some of the employers had written procedures. Most cases do not proceed beyond the conciliation stage and are settled during conciliation hearings or shortly thereafter. This means that employers usually do not require representation as the process is informal and not complex. Employers have little to fear, either financially or otherwise, from unfair dismissal claims even if the employee has been dismissed 'unfairly'. Voll's case studies suggest that even where employers act arbitrarily and unfairly the consequences in terms of time and money spent in defending claims are minimal.

CONCLUSIONS

This paper has used the most prominent and significant of recent research studies into the impact of unfair dismissal laws on small business in an effort to evaluate the claims and objectives of the federal government's reform agenda. The two most consistent arguments put by the government are that unfair dismissal laws inhibit jobs growth in the small business sector and that the processes used to resolve unfair dismissal claims are cumbersome and too complex. However, as critics such as Waring and De Ruyter (1999), Pittard (2002) and Barrett (2003) have shown, there is no clear link between employment and unfair dismissals and that the calculations offered by the government do not stand up to scrutiny. Indeed, this was also the opinion of the Federal Court. The survey by Robbins and Voll (2004) also found that on the whole small businesses did not significantly share the governments' conviction of an employment link as did a survey of the major issues affecting regional businesses (Robbins, Murphy & Petzke 2004).

The paper also explored the importance of unfair dismissal laws to regional small business by quite simply quantifying the incidence of disputes over termination of employment. The Robbins and Voll (2004) survey for example found that less than

3% of respondents had any direct experience of an unfair dismissal dispute. The low incidence of claims found in this survey confirms the national figures and trends apparent from the Annual Reports of the AIRC. The small number of claims made against small business operators was also confirmed by Chalk (2004) in her study of members of the Motor Traders Association. She also found that, while there was a marginal link between employment growth and the exemption of small businesses from unfair dismissal law, there was just as distinct a possibility that employment levels might actually decline if small businesses were exempted.

This paper has also examined the government's claim that the process of hearing and resolving unfair dismissal claims in the AIRC are complex and cumbersome. Robbins and Voll (2004) examined the complexity of proceedings and found that most regional small businesses chose to represent themselves (53%) in any processes although a significant number did seek advice from an employer association or a lawyer (67%). The inference is clear, armed with some advice, more than half of regional small business operators faced with a claim against them were confident enough to represent themselves. Even if cost were a factor, it was not so great a concern as to inhibit this confidence. Given also that 60% of those small businesses who had direct experience with an unfair dismissal claim expressed satisfaction with the outcome, it can be concluded that self-representation has generally proved effective. Insight into procedure was also examined by this paper through a summary of the qualitative research conducted by Voll (2005). The case studies outlined in his paper offer the sobering reminder that termination may very well be unfair to an individual employee. But, more pertinently, these case studies confirm that the processes of resolving unfair dismissal claims is not overly complex or demanding

and that the outcomes achieved are rarely likely to be as damaging to the employer as unemployment is to the employee.

The answer to whether or not the regional small business sector is happy with current unfair dismissal law is mixed. On the one hand while 60% of those regional small businesses with first hand experience of unfair dismissal claims were reasonably satisfied with the outcome of proceedings, 48% of total survey respondents thought unfair dismissal laws were unfair to small business. One conclusion that could be drawn from this contradiction is that publicity regarding unfair dismissal law has coloured regional small business perceptions rather than actual experience. However, perceptions of unfairness have not translated unequivocally into support for the government's reform agenda: 38% of regional small businesses think that they should not be exempted from the legislation while 37% think they should. This reluctance may be motivated by the fear that the removal of such a basic employee right or protection may make employment in the small business sector appear less attractive (Robbins, Murphy and Petzke 2004).

The review of the research material available on the impact of unfair dismissal law on small business conducted by this paper points to an unambiguous conclusion: there is no significant evidence justifying the exemption of small business from this employment protection law. However, the Coalition federal government remains firmly determined to repeal unfair dismissal law for small business and it will, in July 2005, have the parliamentary capacity to actually do so. Exempting these small businesses will reduce the rights and protections available to their employees and Australia's long-standing commitment to ILO employment conventions. While the implications seem significant the justification seems weak. The government asserts there will be job growth but the only detailed evidence suggests the distinct possibility

that the exemption may reduce employment (Chalk 2004). The question could be asked: why not exempt all small businesses? The creation of a divide between businesses and their workforces is always somewhat arbitrary and lines can be shifted. If this happened would big business remain willing to shoulder the weight of unfair dismissal law? These questions are not entirely fanciful.

Although the political reality of power in Canberra will soon make much of this debate irrelevant, the need for further and on-going research into the relationship between small business and unfair dismissal laws will not disappear. Research should continue after exemption has been granted because the jobs growth argument of the government should be tested and monitored. Similarly, the concern that there might be negative job consequences also creates an essential need for on-going research. The inevitability of change to this aspect of employment law does not diminish but merely shifts and modifies the focus of our responsibility as researchers of employment relations.

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