

# Submission

to

Senate Employment, Workplace Relations and Education  
References Committee

## **Provisions of the Workplace Relations Amendment (Protecting Small Business Employment) Bill 2004**

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**Submission no:** 6

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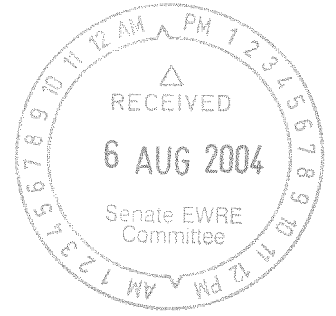
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## **THE RECRUITMENT AND CONSULTING SERVICES ASSOCIATION LTD**

The RCSA is the peak body for the recruitment and consulting services industry throughout Australia and New Zealand. It is a not-for-profit association that is managed by a Board of Directors.

The central focus of the RCSA is “to represent and serve the interests of members for the increased profile and professionalism of the industry”. The RCSA has more than 3200 members in Australia and New Zealand comprising multi-national companies, single consultancies, and individual practitioners operating within a recruitment consultancy.

The association is instrumental in setting professional standards, educating and developing member skills, monitoring industry participant performance and working with legislators to formulate future work practices. Members are kept up-to-date on information regarding best practice techniques, resources and technological innovation, along with legislative changes impacting on employment.

The RCSA also acts as a lobbying voice, representing its members on issues that impact upon the industry. It has a strong relationship with the public and private sector.

Members offer the following capabilities:

- On-hired employee services
- On-hired contractor services
- Recruitment services
- Employment consulting services

Key Statistics from the Australia Bureau of Statistics:

- The employment services industry earned a total income of \$10.2 billion in 2001/2002, which is an increase of 31 per cent on the 1998/1999 survey.<sup>1</sup>
- \$9.3 billion was received through on-hired employment (formerly known as labour hire), and this can further be broken down into \$879 million from permanent placement and \$8.25 billion from temporary/contract placements.<sup>2</sup>
- The industry contributes 1.3per cent to the country’s GDP which contributes more to the Australian economy than legal services (1.2 per cent) and accounting (1.1 per cent).<sup>3</sup>

<sup>1</sup> *Employment Services Australia, 8558, Australian Bureau of Statistics, August 5, 2003*

<sup>2</sup> *Employment Services Australia, 8558, Australian Bureau of Statistics, August 5, 2003*

<sup>3</sup> *Employment Services Australia, 8558, Australian Bureau of Statistics, August 5, 2003*

## **SITUATION ANALYSIS**

Redundancy payments have been recognised in many awards and Industrial Relations Commissions' decisions, as noted in the explanatory memorandum for the Workplace Relations Amendment (Protecting Small Business) Bill 2004.

Redundancy exemption provisions for small businesses are not uniform across the States and Territories. As noted in the explanatory memorandum, some states exempt businesses with less than 15 employees from making redundancy payments, while other states do not.

Redundancy payments generally apply to part-time and full-time employees, usually after a period of service of twelve months or more. Casual employees are generally not entitled to redundancy payments, but they receive a loading of between 20 and 33.3% on their hourly ordinary time rates of pay to compensate for this. Casual loadings also cover other benefits, such a sick leave and annual leave, to which part-time and full-time employees are entitled. The incorporation of severance and redundancy payment compensation in casual loadings was recognised in the recent TCR 2004 test case.

Many, but not all, on-hired employees are engaged on a casual basis; while many on-hire employee service providers are small businesses, with a handful of directly employed permanent employees providing recruitment and employment services for many more on-hired casual employees.

## **THE KEY ISSUE**

The RCSA supports this Bill to protect small businesses from having to make redundancy payments pursuant to the TCR test case decision handed down earlier this year.

It supports this Bill, as it recognises that keeping large cash reserves to cover potential redundancy payments is restrictive and can create poor cash-flow situations for the running of businesses. Indeed, restricting a business' cash flow could well be a cause for the failure of an otherwise successful business. The RCSA does not wish to see any business fail, especially those of its members. Where an employment services provider fails, the impact on jobs can be much more significant than other businesses, as employment services providers not only provide on-hire and permanent employment opportunities, but also employment and HR advice to guide other businesses.

Furthermore, the additional cost of employing with any new redundancy regulations covering small businesses would be an onerous impost in addition to the existing costs of employing staff, costs which need to cover occupational health and safety measures, industrial relations actions and workers compensation amongst others. Any further costs to small business would remove their competitiveness and have an adverse effect on the economy and employment generation in Australia.

## **Definitions**

An important point to consider in this Amendment is the definition of employee for the purpose of determining employee numbers for exemption from redundancy entitlements.

The RCSA recommends that the definition of employee in defining a business with less than 15 employees should not include casual employees who have been employed on a long term basis, that is for over twelve months as provided for in the Bill in question. The RCSA believes that as casual employees are not entitled to redundancy benefits then they should not be included in any determination of what should or should not be a small business for the purposes of such redundancy provisions.

The RCSA calls upon the Government to limit the definition of employee for the purpose of determining an entitlement to redundancy provisions to permanent employees and casuals with more than 12 months service should be excluded.

To include casual employees with more than 12 months continuous service in determining whether an employer is a large or small employer is to ignore that many small on-hired employee service providers would have a number of longer term on-hired casual employees whilst not being a large traditional employer of direct employees.

Therefore it is critical that even if the committee recommends to retain long term casuals in its determination of large and small employers that on-hired employees be excluded as this is not a fair reflection of business size..

## **CONCLUSION AND RECOMMENDATIONS**

The RCSA is the leading industry body for recruitment and on-hired employee services - that is we represent many small business members who, in turn, provide employment for many Australians. We would like to thank the Senate Committee for the opportunity to present our views on the issues.

The RCSA broadly supports the proposed amendments to the Workplace Relations Act to protect businesses with fewer than 15 employees from having to set aside funds to cover potential redundancies.

However, the RCSA also believes that casual employees of any sort should not be used to determine whether an employer is a large or small employer. To include long term casual employees in the determination would cause unnecessary confusion about the entitlements of casual employees to redundancy benefits more broadly. Casual employees already have redundancy provisions in the form of the casual loading applied to their hourly rates.

However, if the Committee decides to retain long term casual employees in the determination of what should or should not be deemed a small employer on-hired employees should be excluded.

We are keen to work with the Government, and discuss our views further to develop a workable solution that does not increase business costs for small businesses and consequently builds our economy.