

## **Submission to the Senate Employment, Workplace Relations Amendment (Protecting Small Business Employment) Bill 2004**

Dr John Burgess  
Employment Studies Centre  
University of Newcastle  
Callaghan NSW 2308  
02-49215028, phone  
02-49216919, fax  
[john.burgess@newcastle.edu.au](mailto:john.burgess@newcastle.edu.au)

The following submission is a personal one that does not represent the view of the University of Newcastle or the Employment Studies Centre on the proposed amendments to the bill.

1. The amendment should be rejected on the grounds that:
  - a. it creates a different class of employee that is related to the size of the organisation in which they are employed
  - b. it presumes an association between business size, financial capacity and employment numbers
  - c. it fails to recognise the considerable variations in employment arrangements and their associated implied contingency payments for employers
  - d. it implies a form of business subsidisation that appears to be contrary to the national competitive agenda
  - e. the issue of “affordability” is raised for employing organisations, but in many cases this is only an issue in the case of employment termination, it does not for all business employees who exit
  - f. it highlights the fact that employee entitlements are not fully accounted or provided for in the accounting operations of Australian business
  - g. it is inconsistent with the attempts by the Government to encourage personal savings
2. Employees are to be excluded from certain employment benefits on the basis of the size of the organisation. This is legislated discrimination that creates different classes of employees. While small business may have diminished financial capacity it also has diminished potential liability for redundancy. That is, why should the relative financial liability of a business with 15 employees be less than a business with 25 employees? This is presumed but never established by the proposed legislative changes.
3. The exemption would apply to business who have less than 15 employees. This fails to consider the fact that this could encompass different mixes of part-time and full-time employment, and different mixes of permanent and casual employment. Businesses with a high density of part-time and or casual employees would have relatively low contingent liabilities for redundancy payments as opposed to business that a relatively high density of full-time

and permanent employees. The proposed threshold exemptions makes no allowance for different employment arrangements and how these impact on redundancy payments.

4. With the development and growth in “external” employment arrangements it is possible for a business to have relatively few “employees” but a relatively large number of workers at the business establishment who are not employees of the business but who are sub-contractors or agency workers. Again, the number of employee test fails to recognise the development and growth in employment arrangements located outside of the traditional employment model.
5. From the above, the number of dependent employees is only one indicator of business size or financial capability. A relatively large business in terms of turnover and assets may require relatively few employees since the business is capital intensive. The employee size test does not discriminate across sectors in terms of the differences in the capital intensity of production.
6. The potential liability for a business with redundancy payments increases with 3 factors – the length of service, the pay rate and employment status (full-time versus part-time, casual versus permanent). For a variety of reasons average wages are lower in small businesses and not all employees are full-time (on average around 30 per cent plus will be part-time) and not all are employees will have long term service. Many employees will leave before they can build up any redundancy entitlement and others (casuals) will have no entitlement on termination. It is not the case that small business will necessarily have relatively higher paid, longer serving or more full-time employees than other businesses. Without supporting evidence my view is that the relative liability would be lower for small businesses since evidence suggests a higher part-time and casual density for small businesses.
7. Redundancy payments are a contingency that are paid on employment termination. One problem in Australia is that this contingency is not adequately or fully accounted for. Traditionally the accrued benefits have been viewed as part of the working capital of the business. Businesses do not set aside a fund for redundancy payments on the basis that not all employees will leave the business at the same time. In the case of business termination the Government has the GEERS program to protect employee entitlements but this would not be applicable small business employees with respect to redundancy payments. By excluding small business from redundancy payment provision the proposed legislation in effect states that in the case of business failure one class of employees will not be afforded similar treatment than another class of employee since they were excluded from a standard benefit in the first place.

8. The redundancy payout would be greatest where a large number of long serving employees are made redundant. This is more likely in the case of business failure or in the restructuring of the business associated with ownership changes. In the case of failure employees would have a claim over the business assets or in the case of incorporated businesses, a claim under the GEERS arrangements. This legislation denies a certain class of employees a particular entitlement and therefore it denies them access to recovery means that would be available to other employees.
9. One of the rationale's for redundancy was to provide funds for job search and re-location in the event of termination. This provision will not be available to employees of small business who would face search and re-location expenses in the case of an unexpected redundancy.
10. From the above the provision for assistance would fall on to government funded job search allowances and assistance. This is an implied subsidisation for small business who would not be providing for this provision (unless contained in a certified agreement or individual agreement).
11. In the above event a form of direct subsidisation is more transparent and subject to greater public scrutiny. For example, the government could consider the partial funding of an insurance fund to cover the employment entitlements (including redundancy) of small business employees.
12. It is not clear whether it is the size of the potential liability or the fact that the potential liability is not adequately accounted for in a business balance sheet that represents the small business "problem". Much of the evidence in the original case considered the financial capacity to pay of small business, this would only be an issue in a number of circumstances – a relatively large number of simultaneous redundancies of long standard permanent and full-time employees and no provision of funds to meet the entitlements.
13. Finally, exemptions create the potential for moral hazard. In this case it is not clear why employees should be the ones who bear the cost of the proposed exemption. It is also apparent that the exemption increases the complexity and application of the Workplace Relations Act.

## **References**

- J. Burgess and M. Baird (2003), Employment Entitlements: Development, Access, Flexibility and Protection. Australian Bulletin of Labour. 29, 1, 1-13.
- J. Burgess, J. Dark, J. Lewer and P. Waring (2004), Employee Entitlements in Australia: Accounting Standards, Corporate Governance and Industrial Democracy. Conference of the Association of Industrial Relations Academics of Australian and New Zealand. Griffith University.
- J. Riley (2003), Protection for Employment Entitlements: a Legal Perspective. Australian Bulletin of Labour. 29, 1, 31-45.

P. Waring and A. de Ruyter (2001), Dismissing the Unfair Dismissal Myth.  
Australian Bulletin of Labour. 25, 3, 251-274.