

Submission

to

Senate Employment, Workplace Relations and Education
References Committee

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

Submission no: 10A

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Mr John Carter
The Secretary
Senate Employment, Workplace Relations
And Education Reference & Legislation Committee
Parliament House
CANBERRA ACT 2600

By email

Dear Mr Carter

Re: **INQUIRY INTO THE WORKPLACE RELATIONS AMENDMENT
(PROTECTING SMALL BUSINESS EMPLOYMENT) BILL 2004 (THE
BILL).**

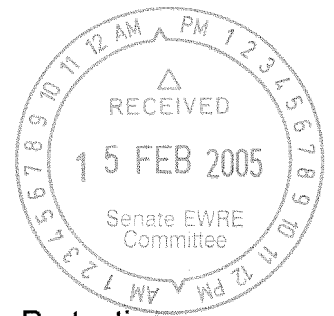
The AMWU has previously prepared and lodged a submission to the above Inquiry (Refer Submission No. 10 dated 24.08.2004).

With the Bills re-introduction, the AMWU has prepared an additional submission which is to be read in conjunction with our earlier document (Submission No. 10).

Yours faithfully

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INTRODUCTION

1. The AMWU has previously forwarded a submission on the Protecting Small Business Employment Bill (PSBE). The following points are to be read as incorporated within our earlier submission.

ILO CONVENTION CONCERNING TERMINATION OF EMPLOYMENT AT THE INITIATIVE OF THE EMPLOYER (THE CONVENTION) – PART I

2. The Convention appears at Schedule 10 of the Workplace Relations Act 1996 (the Act). Australia as an ILO Member is signatory to the Convention.
3. The Convention provides that members may exclude specific categories of workers (Article 2, paragraph 2) in specific circumstances.
4. Article 2, paragraph 5 allows members to exclude from the “Convention or certain provisions thereof” limited Categories of employed persons in respect of which special problems of a substantial nature arise” including categories based on the size or nature of an enterprise.
5. The Government has not made a case that “ special problems of a substantial nature arise” regarding the application of the ILO convention to employers of less than 15 employees. The Government’s failure to establish its case places Australia in breach of the convention. If “ special problems of a substantial nature” were to arise for small employers in applying the Convention they can be accommodated by the incapacity to pay provisions of the Commissions’ Termination and Redundancy test case standard.

THE CONVENTION – PART II – STANDARDS OF GENERAL APPLICATION

6. Part II of the Convention includes Divisions pertaining to: -
 - justification for termination (article 4-6)
 - procedures applying prior to and at time of termination (article 7)
 - appeal procedures (article 9-10)
 - period of notice (article 11); and
 - severance allowance and other income protection

None of the specific articles above, including the severance allowance provision, provides for Members to exempt employers (based on their size) from the Convention’s rights and responsibilities.

PART III – STANDARDS APPLYING TO TERMINATION FOR ECONOMIC AND/OR TECHNOLOGICAL CHANGE

7. Unlike Part II, Part III of the Convention specifically provides the capacity for Members to exclude small employers (less than 15 employees) from the requirement to consult (article 13) and the requirement to notify competent authorities (article 14).
8. The absence of a specific exemption based on employer size in Part II of the Convention must be interpreted as an intention that prima facie small employers are covered by Part II of the Convention.
9. The failure of the Government to establish that the PSBE is both “necessary” and a “response to problems of a substantial nature” is a clear breach of the Convention.

CASUALS

10. The propensity of business to contract out core functions can create misleading perceptions of small business. If an employer directly employs 14 employees and utilises another 35, for example, from a labour hire agency, they should not be considered a small business employer for the purposes of the PSBE.
11. The Bill includes Casuals, with 12 or more months service, in the numbers to be included when determining employer size (the less than 15 count) The Bill should be amended to specifically include casual employees working on site through a contract for service, that is labour hire and contractors.
12. Including labour hire and contract workers is consistent with the recommendation of the Community Affairs References Committee that:

“ The Commonwealth legislate to guarantee the right to standard entitlements, such as annual leave and sick leave, for labour hire workers”. (Recommendation 10, report on poverty and financial hardship, March 2004).