

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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Submitter: Mr Mike Harris

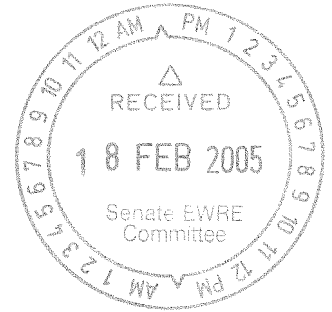
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Senator John Tierney
Chair
Senate Employment, Workplace Relations and Education Committee
Parliament House
Canberra ACT 2600

Dear Senator

The Australian Capital Territory welcomes the opportunity to make a submission to the Inquiry into the provisions of the Workplace Relations Amendment (Small Business Employment Protection) Bill 2004 (the Bill).

The ACT Government does not support the adoption of the Bill. The Bill is primarily aimed at reversing the effect of the Australian Industrial Relations Commission (AIRC) decision in the 2003 Redundancy Case (PR032004). ACT Government believes that it is inappropriate for the Federal Government to legislate to overturn a decision of the AIRC. The ACT Government is also concerned that the Bill may be contrary to the principle of equal protection of the law, a fundamental human right protected under recent ACT human rights legislation.

In the ACT employers and employees are covered by the federal workplace relations system. While the ACT can make laws about industrial relations (schedule 4 to the *ACT Self-Government Act 1988* (Cth)), section 28 of the Self-Government Act provides that Territory laws have no effect to the extent that they are inconsistent with federal laws. Therefore the Bill would apply to all ACT workplaces.

As a matter of principle, the ACT Government supports the role of the AIRC within the industrial relations system. The AIRC is an integral and vital part of Australia's unique industrial relations system. The system depends on the AIRC as an independent and impartial body.

While the Federal Government is able to legislate to overturn a determination of the AIRC with which it disagrees, to do so undermines role of the AIRC. It also reduces public confidence in the AIRC and the industrial relations system as a whole. Having reposed the discretion to make such determinations in the AIRC, the appropriate role for the Federal Government within the system is for the Minister to intervene in cases and make submissions to the AIRC.

In the course of thirteen days of hearings, extensive evidence was provided to the AIRC by employer and employee groups as well as State and Federal Governments. The AIRC gave careful consideration to the merits of both the cases for and against extending redundancy payments to small business employees and made its determination in light of the evidence presented. This decision of the AIRC should be allowed to stand.

The Bill goes beyond merely reinstating the law as it was before the AIRC redundancy decision. It redefines the meaning of employee to exclude casual employees unless they have been employed for a year on a regular and systematic basis. This clearly broadens the scope of the small business exception to include a greater number of employers, thus expanding and enlarging the numbers of employees who are denied legal protection of redundancy payments.

The Bill may also be contrary to the provisions of the *Human Rights Act 2004 (ACT)*, in particular subsection 8(3), which protects the fundamental human right of equality of protection before the law. Under the proposed legislation, employees would have different employment protections depending on the size of their employer.

The ACT Government is committed to the protection of human rights and sees this bill as contrary to the right to equality before the law.

I trust these comments will assist the Committee in its deliberations.

Yours sincerely

M.L. Harris
Chief Executive

February 2005