# Submission

to

Senate Employment, Workplace Relations and Education
References Committee

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

---


**Submission no:** 16

**Received:** 22/02/2005

**Submitter:** Mr Christopher Warren
Federal Secretary

**Organisation:** Media, Entertainment and Arts Alliance

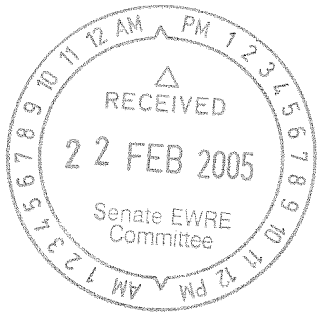
**Address:** PO Box 723
STRAWBERRY HILLS NSW 2012

**Phone:** 02 9333 0958

**Fax:** 02 9333 0933

**Email:** lynn.gailey@alliance.org.au


---




**SUBMISSION**

**BY**

**MEDIA ENTERTAINMENT AND ARTS ALLIANCE**

**TO THE**

**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION LEGISLATION COMMITTEE**

**INQUIRY**
**WORKPLACE RELATIONS AMENDMENT (SMALL BUSINESS EMPLOYMENT PROTECTION) BILL 2004**

**FEBRUARY 2005**

**The Media Entertainment and Arts Alliance**

The Media Entertainment and Arts Alliance (Alliance) is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Its membership includes journalists, artists, photographers, performers, symphony orchestra musicians and film, television and performing arts technicians.

The Media Entertainment and Arts Alliance (Alliance) welcomes the opportunity to make comment on the Workplace Relations Amendment (Protecting Small Business Employment) Bill 2004.

The Alliance is opposed to the Bill as it creates a category of employees who are determined only with reference to the size of the workforce of their employer. Importantly, the Bill assumes that small businesses do not have the capacity to meet redundancy obligations in the event such obligations arise, despite the fact that the evidence does not exist to support the premise.

The Bill will overturn the decision of the Australian Industrial Relations Commission (AIRC) in the Redundancy Case. That Case dealt comprehensively with the issues and the evidence and found that the argument that small businesses did not have the financial capacity to pay could not be supported.

In the Redundancy Case, the Commonwealth argued that small business is less able to bear the costs of redundancy payments than larger businesses, that to impose this obligation on small business would influence the hiring behaviour of small business, and adversely impact on the ability of small business to adapt to changing levels of demand, to the business cycle and to technological change.

The AIRC found that "the available evidence does not support the general proposition that small business has a relative lack of financial resilience and has less ability to bear the costs of severance pay than larger businesses. We accept that this is true of some small businesses, but the evidence falls well short of establishing, as a general proposition, that small business does not have the capacity to pay severance pay. Three considerations support our conclusion. The first is that small business is generally profitable. The second is that some small businesses make severance payments despite the absence of a legal liability to do so. A third consideration is the absence of evidence from those jurisdictions where the small business exemption does not exist, or in those industry sectors where it has been removed from the relevant federal award, that small business is less profitable or more likely to fail."[1]

The AIRC found that a large proportion, about 70 per cent, of small businesses are profitable, that "some 70 per cent of small businesses which reduced employment still made a profit" and found "a pattern of profitability amongst small businesses, regardless of whether the number of persons they employ is increasing, decreasing or static."[2]

The AIRC found that ABS data on small businesses decreasing employment but still profitable to be consistent with the findings of Bickerdyke, Lattimore and Madge in *Business Failure and Change: An Australian Perspective*, a Productivity Commission Staff Research Paper, published in 2000. That paper found that "while small business accounts for more than 97.5 per cent of all business exits, the single greatest reason for business exit is realising a profit ... of the 7.5 per cent of businesses which exit in any year, only 0.5 per cent do so for reasons of bankruptcy or insolvency ... [and] ... many business exits are anticipated years before they actually occur allowing for adjustment and a reduction of the costs of exiting."[3]

Thus given the matter has been so recently and comprehensively considered by the AIRC and a case for redundancy payments creating an unreasonable impost on small business not found, the Alliance can see no reason for implementing such a change in the absence of evidence to justify such a change.

Further, the proposed changes are arbitrary. By setting the threshold at a business engaging 15 persons is to assume a similarity between businesses that does not exist in reality. To assume that a business engaging 14 persons is fundamentally different from one that engages 16 cannot be substantiated. Similarly, assuming that a business engaging 14 persons is less profitable than one engaging 16 is equally arbitrary. The number of employees is only one indicator of business size and financial capacity. Just as the determination that small businesses are those that employ less than 15 employees is arbitrary, so will the impact on employees be arbitrary.

The Bill also assumes that small businesses have a stable workforce whereas this is not necessarily the case. A film or television production company or live theatre company may have a workforce of

---

[1] Australian Industrial Relations Commission, PRO32004, pages 59 and 60.
[2] Ibid, page 61.
[3] Ibid, page 61.

between two and twenty and then gear up for a particular production. For instance, a television production company may have a workforce of ten and then commence filming a program taking on a further 50 or more employees for the duration of production and then during postproduction winding back to approximately twenty and back to ten during the marketing and distribution of the program and the development and financing of the next. The cycle would then recommence. In such circumstances, the long term staff would be reliant upon when a redundancy occurred to be entitled to compensation. This may well be an unintended consequence of the Bill but it will be a consequence that is in effect arbitrary for the persons who may be made redundant during the development or marketing phase of a production.

The impact on a person made redundant is just as devastating for a worker employed in a workforce of less than 15 as it is for a worker from a workforce of more than 15. Indeed, in the AIRC case no evidence was submitted to the contrary.

The Alliance considers that poor policy is policy that is not based on evidence. The evidence that the requirement for all constitutional corporations to make redundancy payments to eligible employees is an unjustified impost on small business does not exist. Consequently, the decision of the AIRC should stand.

Small businesses do often struggle compared with larger companies that are better resourced to stay abreast of changes in regulation, comply with reporting requirements and so on. The burden of regulatory compliance often falls to the principals within small business detracting them from their core business. Redundancy occurs irregularly and rarely and often not ever in the life of any small business. Conversely, the red tape associated with compliance with such matters as fringe benefits tax, payroll tax, licensing regimes and so can consume considerable number of hours of work that do impact more onerously on small business than is the case with compliance by large companies.

The Alliance does not consider that the Bill will assist the viability of small business in any meaningful way at all but it will discriminate against those employees who work for constitutional corporations with less than 15 dependent employees.