

**SENATE EDUCATION, EMPLOYMENT
AND WORKPLACE RELATIONS
COMMITTEES**

**INQUIRY INTO THE FAIR WORK BILL
2008**

***SUPPLEMENTARY SUBMISSION
BY***

***SHOP, DISTRIBUTIVE & ALLIED EMPLOYEES'
ASSOCIATION***

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The SDA requests the opportunity of making a supplementary submission in relation to the Fair Work Bill.

The only matter we wish to address in this Supplementary Submission is the operation of Clause 123(3) of the Bill.

The SDA notes that concerns over the operation of Clause 123(3) have been expressed by other commentators as shown in the attached online news article. Attachment 1.

Whilst the SDA has already addressed the issue of access, or lack of access, to the unfair dismissal jurisdiction by employees during the first 6 months of employment (12 months in the case of small businesses), the SDA now expresses its extreme concern that the operation of Clause 123(3) means that an employee engaged as a permanent employee can work up to 6 months (and in a small business up to 12 months) and be terminated at any time without any notice or any payment in lieu of notice.

The denial of access to the unfair dismissal provisions of the Act is at least consistent with statements made by the Minister but the SDA never understood that the Government intended to prevent an employee from having the right to receive notice of termination or payment in lieu of notice.

There is no justification for, nor mandate given to, the Government to remove the existing notice of termination entitlements of workers.

Even under WorkChoices, employees who were excluded from making an application in relation to an alleged unfair dismissal, were still entitled to the notice of termination provisions or payment in lieu of notice.

Under WorkChoices there was a very clear difference between the exclusions from notice of termination (S.638 of the Act) and the exclusion from the unfair dismissal jurisdiction (S.643(5) and (6) of the Act).

The Fair Work Bill appears to have combined both forms of exclusions together in Clause 123, with the consequence that an exclusion from the unfair dismissal jurisdiction has been extended to exclusion from the notice periods in the Bill.

The SDA notes that Clauses 382 and 383 of the Fair Work Bill deal with the exclusion of employees from accessing the unfair dismissal jurisdiction of the Bill.

The SDA hopes that the drafting of Clause 123(3)(a) was unintended and that the significant removal of existing employee rights caused by Clause 123(3)(a) will be remedied by having the right to notice of termination or payment in lieu of notice restored.

The restoration of rights to notice of termination or payment in lieu of notice can easily be achieved through the simple amendment of deleting paragraph (a) of Clause 123 (3) of the Bill.