

## GOVERNMENT SENATORS' RESERVATIONS

Government party senators are in general agreement with the report's findings and recommendations, although we would have given more prominence to small business concerns about workplace relations issues. While we also agree with the committee's decision that public liability insurance and the need for stronger trade practices powers are complex issues that are best dealt with by the specific inquiries into those issues during 2002, we think it important that this report records the need for governments to give the utmost priority to implementing policies to address small business concerns in those areas.

There are several issues where Government senators would have taken a different approach or produced stronger or different recommendations. In particular, Government senators believe that the report's treatment of the unfair dismissal issue is not sufficiently balanced and does not provide a comprehensive assessment of the evidence on this issue. This issue is dealt with in more detail in a later section of these comments.

Government senators also believe that the report should be looked at in the context of the government's impressive achievements on behalf of small business over the past 6 years. Any limitations of current policy and program arrangements, and suggestions for change, need to be seen in that perspective.

Since coming to office in 1996, the Coalition government has been responsible for significantly increasing the priority and focus given to small business issues and has demonstrated that it listens to and acts on small business concerns. Some of the most important initiatives are:

- the appointment of a Minister for Small Business and establishment of an Office of Small Business, now within the Department of Industry, Tourism and Resources;
- the establishment of the Small Business Deregulation Task Force (the Bell Task Force) in 1996 to investigate and report on ways to reduce the compliance burden on small business. Almost all of the recommendations that the government agreed to adopt have been implemented, apart from those that have been found to be impracticable or that rely on the cooperation of state and territory governments;<sup>1</sup>
- the introduction in 1997 of the requirement for a Regulation Impact Statement (RIS) for all regulatory proposals that impact on business, including a requirement that the impact on small business is explicitly considered.<sup>2</sup> A review

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1 Office of Small Business, Response to Question on Notice, Attachment A

2 Productivity Commission, *Regulation and its Review 2001-02*, November 2002, p. xviii

of international practice suggests that Commonwealth RIS requirements have led best practice internationally;<sup>3</sup>

- the introduction of the Business Entry Point (BEP) to provide a centralised information point on government programs and legislation affecting business. The Commonwealth government has continued to refine and improve the service available through the Business Entry Point. It has also provided state and territory governments with assistance with online licencing information, through the Business Licence Information Services (BLIS);
- the establishment, in February 1998, of the Micro Business Consultative Group to advise the Government on options for development of the micro business sector;<sup>4</sup>
- the establishment in 1998 of the Small Business Minister's Council to promote increased coordination of Commonwealth and state and territory small business policies and programs;
- the establishment in December 1998 of the parliamentary joint inquiry into the retailing sector, with a specific focus on the degree of concentration in the sector;
- the introduction of the Small Business Enterprise Cultures program and the Small Business Assistance officers program (the latter being replaced with the Small Business Answers Program from early 2003) to meet the needs of small business for mentoring, networking support and referral and advisory services;
- the introduction of the Small Business Forum and Small Business Consultative Committee as means of improving consultation between the Commonwealth and small business. In March 2000, the Small Business Minister's Council endorsed guidelines requiring greater consultation with small business as part of the process of development and implementation of regulations;
- a requirement for all Cabinet submissions with proposals impacting on business to be referred to the Office of Small Business for an assessment of the small business impact; and
- reform of the workplace relations framework to provide more scope for businesses and employees to enter into agreements that meet their needs; and the introduction of legislation designed to address small business concerns, including an exemption from the Commonwealth unfair dismissals legislation.

These initiatives address many of the most pressing concerns and needs of small business and provide an effective foundation of support for small business. More

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3     ibid, p. xix

4     *Under the Microscope, Micro Businesses in Australia*, Report of the Micro Business Consultative Group, February 1998

importantly, the Government's economic management has delivered a sound and supportive environment for business growth, with the lowest inflation in two decades and the lowest interest rates in three decades. Over 600,000 of the 1.2 million small businesses now in Australia were established since the Coalition government came to office in 1996.<sup>5</sup> Over thirty-four percent of all small businesses are in regional Australia. The appendix to these comments illustrates the particular importance of small business in some of the less populated and urbanised states such as Tasmania. That said, government party senators agree that there is scope for changes to improve Commonwealth and state and territory support and services for small business and support recommendations in this report to that effect.

On the issue of unfair dismissal, Government senators believe that the submissions and evidence to this inquiry reinforce previous evidence on the adverse effect of unfair dismissal legislation on small business employment, productivity and profitability. As this report clearly identifies, small business is different. Small businesses have fewer management and financial resources than other firms, have less access to specialist advice and information from industry associations and less capacity to manage complex matters peripheral to their main activity: they are 'time poor' and 'money poor'. Small business owners often invest their life savings or mortgage their homes to finance their business and so the consequences of any unfair dismissal claim, including the time, worry and legal costs involved with court action, the costs of any settlement and even the costs of retaining under-performing employees, can be devastating for them and their families.

Many small business groups, representatives and proprietors raised unfair dismissal legislation as a concern during the inquiry. Their evidence indicates that unfair dismissal legislation affects small businesses in a number of ways. Fear of the consequences of recruiting an unsuitable employee discourages many small businesses from employing people outside their own family;<sup>6</sup> it prompts some to turn to labour hire firms;<sup>7</sup> it results in many others choosing to employ people as casual rather than permanent staff;<sup>8</sup> and it deters many others from employing at all.<sup>9</sup> The managing director of the Micro Business Network told the committee that unfair dismissal laws deter many micro businesses from employing: 'I constantly have people say to me. 'I won't employ because of the unfair dismissal [laws]....' That is

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5 Mr Joe Hockey, Minister for Small Business, Question without notice, Economy; Small Business, 20 March 2002, *House Hansard*, p. 1682

6 Mrs Vicki Brown, Great Southern ACC, *Hansard*, Albany, 18 July 2002, p. 88

7 Mr Edward Smith, Great Southern ACC, *Hansard*, Albany, 18 July 2002, p. 94

8 Mr David Wilkes, Retail Traders Association of Tasmania, *Hansard*, Launceston, 26 July 2002, p. 419; Mr Vincent Schofield, NFIB Gold Coast, *Hansard*, Brisbane, 12 September 2002, p. 724 advised that all of his 12 employees have been engaged on a casual basis

9 Ms Emma Larkins, *Hansard*, Sydney Roundtable, 15 August 2002, p.682; Ms Barbara Gabogrecan, Micro Business Network, *Hansard*, Melbourne, 24 July 2002, p.234; Mr John Gilmour, *Hansard*, Melbourne Roundtable, 25 July 2002, p. 381

their sole reason for non-employment.’<sup>10</sup> This evidence is consistent with the results of surveys undertaken by the Australian Chamber of Commerce and Industry (ACCI) which indicate that the unfair dismissals legislation is among the top five problems facing small business.<sup>11</sup> Small business proprietors also told the committee that they may be reluctant to terminate an under-performing, unsatisfactory or redundant employee for fear of the consequences of an unfair dismissal claim, even though this can result in a loss of business, reduced profit or a high turnover of other staff. As one small business people put it, ‘one person can wreck a lot in a short period of time’.<sup>12</sup>

Unfair dismissal claims also result in significant costs for small business owners. The Restaurant and Catering Association told the committee that its survey of restaurant owners found that 38 per cent had defended an unfair dismissal claim, at an average cost to the employer of 63 hours of their time and \$3675 in legal or settlement costs. These estimates translate into \$18.2 million direct costs and \$15.5 indirect costs (principally the manager's time) for the industry as a whole.<sup>13</sup>

One reason for the high financial and psychological costs associated with unfair dismissal claims is the complexity and ambiguity of the laws, procedures and requirements. One small business owner told of a case where an employee was permitted to bring a claim against the employer even though the statutory 21 days period since dismissal had passed.<sup>14</sup> A participant at a roundtable in Perth told the inquiry that employees can be granted compensation or re-instatement simply because the processes leading to their dismissal had not been properly documented.<sup>15</sup> The Department of Employment and Workplace Relations told the committee that it is not possible to fully address the problem of complexity and uncertainty by providing simple procedural information or advice for small business as there are so many factors that a court or tribunal may take into account in determining whether a dismissal falls within the terms of the legislation.<sup>16</sup> Multiple jurisdictions add another layer of complexity: the committee was told of instances of ‘forum shopping’ where employees could choose between whether to pursue their case in either the state or Commonwealth jurisdictions, depending on which they judged most likely to provide a favourable outcome.<sup>17</sup> It also complicates training and information. The committee was told of the difficulty of educating small business people in Albury-Wodonga,

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10 Ms Barbara Gabogrecan, Managing Director, Micro Business Network, *Hansard*, Melbourne, 24 July 2002, p. 234

11 Australian Chamber of Commerce and Industry, *The Small Business Agenda for Change*, September 1998, p. 1; Submission No. 37, Australian Chamber of Commerce and Industry, p. 8 quoting 2001 survey.

12 Mr Edward Smith, op. cit., p. 94

13 Mr John Hart, Restaurant and Catering Association, *Hansard*, Sydney, 14 August 2002, p. 587

14 Ms Elizabeth-Anne Gervay, *Hansard*, Sydney, Roundtable, 15 August 2002, p. 682

15 Mr Anthony Thompson, *Hansard*, Perth, Roundtable, 19 July 2002, p. 175

16 Submission 54, Department of Employment and Workplace Relations, Attachment C, p. 9

17 Mr John Hart, op. cit., p. 591

where many could come under the Commonwealth or New South Wales legislation, depending on where the business is located, whether it is incorporated and other factors.<sup>18</sup>

The evidence collected during the course of the inquiry is consistent with the findings of the recent study by Dr Don Harding of the University of Melbourne. Dr Harding undertook an analysis of small and medium enterprise responses to a survey on the effect of unfair dismissals legislation on employment decisions. His survey used a screening approach to address and overcome the purported defects of previous surveys on this issue.<sup>19</sup> It found that many of those small or medium employing businesses surveyed had altered their recruitment and selection processes as a result of unfair dismissal laws by resorting to greater use of fixed-term contracts (11.6 per cent); greater use of casual over permanent staff (21.3 per cent); or greater recourse to employment of family and friends (20.7 per cent).<sup>20</sup> Businesses surveyed also reported a reluctance to engage the long term unemployed or those who have changed jobs many times in the past; that management of their workforce has become more difficult as a result of the laws; and a reluctance to dismiss unsatisfactory employees, with adverse consequences for other employees.<sup>21</sup> Eleven per cent of non-employing - but previously employing - businesses reported that unfair dismissals had been a factor in their decision to reduce the number of employees. This translates into more than 70,000 job losses where unfair dismissal laws played a role (of which 60,000 jobs are in small business).<sup>22</sup> The report also found that unfair dismissal laws cost small and medium businesses \$1.3 billion each year.<sup>23</sup>

Government party senators support the Commonwealth government's proposal to exempt small business from the Commonwealth unfair dismissals legislation as the most effective way of addressing the concerns of the small business community and the adverse effect on employment and productivity in small business. The committee majority advocates more training and information as a means of changing small business perceptions of unfair dismissal laws and presumably enhancing their confidence to employ and to dismiss. While government senators support increased training and improved information provision on unfair dismissal requirements, they do not consider that these will address the main problems with the legislation. Specifically, they do not address the high cost of defending unfair dismissal claims and the uncertainty and complexity of the process. In these circumstances, a better

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18 Submission 44, Albury-Wodonga ACC, p. 3

19 D. Harding, *The Effect of Unfair Dismissal Laws on Small and Medium Sized Businesses*, Melbourne Institute, University of Melbourne, 29 October 2002, p. iii

20 *ibid.*, p. iv

21 *ibid.*, pp. iv -v

22 D. Harding, *The Effect of Unfair Dismissal Laws on Small and Medium Sized Businesses*, Melbourne Institute, University of Melbourne, 29 October 2002, p. vii

23 *ibid.*, p. 8

understanding of the requirements of unfair dismissal laws is unlikely to change business perceptions about the pitfalls of defending an unfair dismissal case.

Government senators also note that training and information can only ever be a partial solution to overcoming any lack of small business understanding. As this report indicates, it is difficult, if not impossible, to ensure that information and training programs reach all, or even the majority, of the more than 1.2 million small businesses dispersed throughout Australia. Without an exemption from unfair dismissal laws, many small businesses are likely to continue to decide that employing staff, or dismissing non-performers, is simply not worth the risk. The losers will be those most disadvantaged in the labour market, including the long term unemployed, those seeking entry level employment or less highly skilled jobs and people in regional areas.

Government senators also believe that moving to a single jurisdiction for industrial relations could do much to remove complexity and uncertainty from the employment framework and that this would be of significant benefit to small business.

Government senators would also like to record their views on some other matters raised in the report. As the report highlights, there is an urgent need to reduce the burden of government regulation on small business. Government senators support the recommendations in the report for systematic review of regulations but are concerned that the commitment to review may falter over time. Government senators believe that there is a case for considering other measures that would provide a stronger discipline for ensuring review. For example, governments should consider including sunset clauses in new regulations, wherever appropriate. Government senators also support regular and systematic reviews of legislation with a major impact on small business. They also strongly support the Government requirement that all Cabinet submissions affecting small business include a small business impact statement prepared by the Office of Small Business.

Government party senators note that small business owners raised concerns about the current operation of the superannuation contribution arrangements, including the fact that employees can have small amounts accumulating in a range of different accounts. Nationally there is \$7 billion in superannuation accounts where the owner cannot be located. Government senators therefore strongly support measures that would increase the recognition of the value and cost of employer contributions to superannuation. They also support government proposals for full disclosure and choice of superannuation fund.

The current workers compensation and occupational health and safety arrangements are extremely onerous for small business. Government senators commend the proposal for the Productivity Commission to inquire into the general issues of health and safety regulation and strongly support the report's view that small business be consulted on the terms of reference of the review. Indeed, small business should be closely consulted throughout the review.

Payroll tax is another area where the on-costs of employment are very high and, in the view of many small business owners, a deterrent to increasing employment.

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Government senators consider that state governments should review payroll taxes with a view to phasing them out as state and territory government revenue from the GST increases.

As the committee's report notes, small businesses raised a number of concerns specific to particular industries, which it has not been possible to deal with in any detail. These include the effect of the extension of gaming facilities, and poker machines in particular, on the retail and restaurant and café industries and the effect of de-regulated shopping hours on small businesses in the retail sector. Government senators note the importance of these concerns to small business.

Finally, Government senators would like to note that while we support the report's recommendations for changes to small business programs to improve their effectiveness, we believe that, ultimately, the most effective way for governments to support small business, is to provide an economic environment within which business can achieve its full potential. This means an environment characterised not only by low inflation and low interest rates, but also by minimal government taxation or intrusion into the affairs of businesses and individuals. Most small business people are risk takers who are prepared to place their necks on the line and take responsibility for their business and investment decisions. They do not look to governments for assistance, support or handouts. Rather, in the words of one of the small business owners at a roundtable in Western Australia, they are looking for governments to 'get off their backs' and intrude as little as possible:

... if you really want to help us, and I sincerely mean this, leave us alone.  
Do not get involved.<sup>24</sup>

Government senators support a policy framework that minimises government expenditure and taxes and promotes an ethos of individual responsibility. Such an approach provides the best environment within which individuals and small business can flourish.

Senator J Tierney

Senator G Barnett

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24 Mr Graeme Harris, *Hansard*, Roundtable, Perth, 19 July 2002, p. 195

**SMALL BUSINESS EMPLOYMENT AS A PROPORTION OF PRIVATE SECTOR EMPLOYMENT – STATES AND TERRITORIES (2000-2001)<sup>25</sup>**

New South Wales	47.9
Victoria	43.3
Queensland	50.2
South Australia	46.4
Western Australia	49.4
Tasmania	50.5
Northern Territory	45.2
ACT	53.1
Australia	47.2

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25 ABS, *Small Business in Australia 2001*, 1321.0. 2001, Table 4.1, p. 34