

**SENATE ENQUIRY ON EMPLOYMENT**  
**Submission from the Micro Business Network Inc**  
**June 2002**

**1. Employment**

**a) Unfair dismissal** – It is not those already employing who are being affected by this law – it is those Micro and HBB who do not employ. They are often afraid to start – so they use contractors (business to business) rather than take on an employee.

**b) Taxation**

- **Tax collectors** – when it is hard enough for the Micro sector (particularly the owner operator) to find time to keep their own records, it would be of great assistance for operators to be given a fee/discount for collecting money, completing forms and transferring money to the government (GST) – which is a costly exercise for this resource poor sector. These operators are ‘self employed’ – who assists/supports them?  
*(Appendix 1 – Ann Shandley)*
- **Alienation of Personal Service Income** - There has been some progress with this regulation, changing it from simply being an 80/20 rule, to allowing operators to self assess. However, even Accountants do not seem to have this rule correct and are not up to date with the changes. Again, many affected by this ruling are self employed – there is apparent conflict between being a business operator and being self employed.
  - Not being able to claim for assistance from a spouse is unreasonable. If an outsider is employed to collect mail, bank, keep records, take phone messages etc and their wages are a business cost, then there is no reason why a spouse cannot be employed and that cost be claimed. If the ATO is concerned regarding the legitimacy of this claim, then a log book can be kept, the same as is for a vehicle being used for private and business. But why have a ruling that disadvantages the legitimate Home Based Business operator and their spouse?
  - Even mentioning that a commercial property has precedence over a home based office is discriminatory. Declaring an office from one establishment is different to another is beyond justification. An office is an office – it is where the business work is completed – even if it is the kitchen table! This terminology does nothing but confuse and anger over 900,000 Home Based Business operators.
- **Non-Commercial Losses Legislation** - This ruling discourages the person wanting to trial a business idea from doing so. MBN has encouraged owner/operators to have a part-time job or a partner working to help start up a business as a legitimate way to get a business idea off the ground. We now have to question whether or not it is worthwhile trying to start a business at all – it may simply be better to go on the dole if unemployed rather than trying to be self employed.
  - It would be more helpful to have a clearer definition of what constitutes a business, then, when acceptable as a business, allow them to claim their costs against an income – any income.

**c) Superannuation**

- Many Micro and HBB operators do not have superannuation. They invest their money back into their business and hope it will be successful and can either be sold, or keep producing an income as they grow older.
- Many within this sector will not employ because they have to pay superannuation. They contract work out, it is expected that the contractor will have their own cover. The sector do not think it is fair if they have to pay for a contractors superannuation as the operator has to be responsible for their own superannuation, and often earns less than the contractor!
- This sector believes that individuals should be responsible for their own retirement as well as having available Government pensions, as taxes have been paid over a lifetime towards retirement pensions.

**d) Occupational Health and Safety**

- Home Based Businesses are not given any assistance in this area. MBN requested some seminars/training and literature specifically targeting this sector from the appropriate body. None was available or forthcoming.
- Because of the fear of having some areas of the home workplace incorrect (eg. office chair), the sector will not employ in case there is a claim against them. Often second hand furniture is purchased for the home office. If there was a system whereby furniture had a stamp of approval for OHS, then when it became second hand, purchasers would have a better idea of what is best to purchase.

**e) Local Government**

- This is an area of deep concern as local Government is in danger of strangling the growth of the Home Based Business sector because of their ignorance, outdated legislation and often disinterest. The regulations are designed to support non home business residents. If a resident complains, they are always listened to before the Home Based Business (HBB) resident.
- Need an educational programme to demonstrate
  - Value of HBB to a street
  - Value of HBB to local economy
  - Neighbourhood Watch / could take on such a role
- Need a national approach to employment
  - Some areas do not allow any, others have time and number restrictions
  - The National average of HBB employment is above what is allowed now (average numbers employed per HBB is around 2.7) most Councils only allow 0-1
  - If we want to increase local employment and decrease the use of infrastructure, we should encourage HBB employment
  - The sector's demands on employment fluctuate greatly. Instead of having regulations (which are not adhered to anyway – but force the HBB operator to break the law), they could register how many employees they have each month. This would enable the Government to keep a tab on what is happening without having HBB operators break the law because they have to employ more at certain times of the year, to remain in business (which so often is merely being self sufficient).

- New age technology has changed the rules of business and made existing regulations outdated
  - In areas where no retail is allowed, entrepreneurs can sell online easily from a home base
  - Where time limits for doing businesses are imposed – virtual assistants can work at any time via their computer. (*Appendix 2 – Terence M Kierans*)

## 2.Special Needs

- Micro and HBB do things more innovatively and creatively. They have to – they don't have the resources to work traditionally.
- Government has to take into account the owner operator (growing at 9% per annum) as being self employed – thus creating employment. Often these are not true businesses, but are created from necessity – to replace a job which they cannot get. However with support and nurturing, they could become real businesses, with employment that comes from growth. There appears to be no support for these people (something like the NEIS programme could be considered). There could also be a scheme whereby start up funds were provided which are paid back when the business becomes commercially viable – or at a regular monthly/quarterly payment.

**a)Intellectual Property** – the only thing a Micro business has to 'brand' their business is their business name. This is often their sole piece of intellectual property.

- As Government encourages businesses to move into the age of Information Technology, they assume that their business name can also be their domain name. When the Government does not protect this 'right', then the Micro business will be disadvantaged. The business name itself should have greater protection - these operators cannot afford a legal battle for their 'business or domain name' and if caught up in frustrating battles, the environment will not be suitable for business growth and employment.  
(*Appendix 3 – Adrian Stephan*)
- For the Micro/HBB operator, the cost of having their idea trademarked or a patent taken out is prohibitive. There needs to be some support from Government to allow good ideas to receive funding which can be paid back when the business is commercially viable. Effective R&D would lead to successful businesses and future employment.  
(*Appendix 4 – Maurice White*)

## 3.Complexity of Government Regulation

- There is no doubt that some areas of Government create an unbelievable amount of duplication which makes the task of the Micro business unmanageable. It is often in non traditional areas of business that this problem becomes more evident – yet it is in these areas that the micro sector is active – because they are niche type businesses.  
(*Appendix 5 – Peter Mirtschin*)
- This sector is more computer/internet literate than the general small business sector (There were 484,600 (62%) of Australia's home based businesses using computers in their business operations. In addition, 386,300 (50%) businesses had access to the Internet. ABS Stats). They find it saves time and money to do banking, send emails, and general B2B communications etc.
- However so many Government departments and levels of Government vary what they offer that the Micro business user becomes frustrated and tends not to try to deal with Government via the Internet. eg. Various forms can be downloaded off the Internet but then it has to be mailed as a hard copy.

- The Government should push to have **all** areas of compliance able to be made online. A general form could be completed and held online for all the Government departments to call up when they want the information so that businesses only have to complete specific information required by that department.
- It seems as though the Government is trying to push the sector to put in place e-commerce strategies, when the Government itself does not have them in place.  
eg. The ability to register a pet, pay rates, apply for permits etc.

#### **4.Enhance Employment**

- We need to understand that the employment culture is changing. Employment is no longer a right – it is a privilege. Part-time work is becoming more prevalent than full-time. Growth of HBB sector (67% in growth) is indicative of this cultural change. The community and Government need to recognise the different ways the HBB sector run a business and the value of HBB to the community.
- Offer support to the self employed – they are, after all, employing ‘one’.
- Don’t change the rules regarding zoning so that it places businesses at risk. If there must be a change, Government should pay towards re-establishment, the same as a shopping centre should pay if they are going to move a shop from an existing space to another area.  
*(Appendix 6 – Isobel Caulfield)*
- Traineeships are not suitable for this sector
  - As they require someone to supervise and train them (the sole operator does not have the time to do this)
  - This sector has fluctuating demand in workloads requiring support which does not suit ongoing employment
  - Too much time has to be allocated to the record keeping etc – required for the trainees
- An alternative system is needed to not only assist people to be employed, but to also support the new employer. A pool of potential employees (with varying skills) could be set up, but an independent or Government body, allowing employers to call on them when required. This would increase employment, especially if the negotiated wage included ‘on costs’. It would also give the new employer more confidence for future employment.

### ***Appendix 1***

Does anyone in small business ever really say all they ever seem to pay is Tax and I'm not making any money? I actually work with a large variety of small businesses and they all seem to be in the same boat - does the government realise the plight of small business as far as taxes are concerned - they should reduce the tax rates for small business somehow - they did for the wage earner when GST came in - they should do the same for small business.

**Ann Shandley**

### ***Appendix 2***

Of particular concern to the small business owner with a "home office" are the sometimes draconian regulations relating to operating a business in a residential area.

One case I know of does not permit the business to be operated outside the hours of 8am to 5pm. Another does not permit any callers; yet another limits the number of callers per day, regardless of whether they visit on foot or by vehicle. Another requires a more expensive registration fee dependent upon the number of callers per day.

I can understand that these councils are protecting the interests of residents with regard to noise, excessive number of vehicles etc but the regulations are really only applicable to the type of business that is noisy or smelly and requires visits from heavy transport.

In this day and age of the "virtual assistant" these regulation need more careful definition. Why should I not be able to log onto the internet to chat with an overseas client at 1.00am if I want to? Complaints and requests for redress fall on deaf ears.

**Terence M Kierans**

### ***Appendix 3***

- Sometime late 1994 I applied for the domain name logistics.com.au and this was declined on the grounds that it was 9 characters long and only 8 character names were acceptable.
- Early 1995 I was given logistic.com.au, and in early 1999 I applied to vary my domain name by adding an "s" to align it to my company name. This was declined on the grounds that logistics was a generic word.
- Investigation showed that other words that violated the policy were approved as domain names.
- Several representations were made to unlock this matter but it seemed to be impossible to get clear direction. To this day I do not have a definitive decision why logistics was not approved and yet dependability and reliability were.
- I sought arbitration and the only correspondence came from Melbourne IT's lawyers, none from the arbitration body. This seemed to be a "done deal" and I didn't continue.
- I have had representation to Minister Alston through Alan Griffin's and Kay Patterson's offices. The answers do not reflect the reality of what is happening. For example, they talk about the policy, but don't know exactly how the policy is being implemented.
- The issue is that when the Government introduced domain name policy they do not link the corporations and domain name legislation. So, the Feds disenfranchised every business name in the country. They claim there is no property value in the name and yet they passed a regulation to protect the name of Bradman – a cricketer – and will not afford the same protection to every business in the country.
- I have had several legal opinions on this and they are identical. It is common sense that you should be able to have your company name as a domain name, as of right.

- If we have laws to make the relationship between the entity/its name/ACN/ABN, it seems only logical that you must protect the integrity of the links and you must have the ACN/ABN for the domain name. That is, its referential integrity. By analogy, if the police inspected your vehicle and found that the license plate number and the vehicle identification plate number did not make, there would be a lot of questions. Moreover, it makes a mockery of why we have these links if they can be broken. It seems to me that this is in violation of its argument for taxation purposes.
- I again sought to take MelbourneIT and auDA to arbitration and they would not do it. The auDA policy will introduce a Universal Dispute Resolution Process for domain names. Why do we need this when we have an Alternative Disputes Resolution Process in place? Is the only reason is power and control by auDA.
- Although mine might be a specific case and I am trapped, it has wider implications. The right to a domain name is made by people outside of the legal body that approves company names and issues ACNs & ABNs. Thus, the legal process is being usurped by these people and they are getting away with it.
- If we in our businesses cannot have stability in the way we name it then there are major problems. AuDA could change its mind and some companies will lose their domain names.
- The auDA concept of fairness is money; there is no equity test to the name. I think fairness is that if other people can have their company name as a domain name, why can't I – no rules attached.
- I have been told that Alston is aware of this problem but I don't think he understands it.
- The bottom line:
  - Any business, as of right, should be able to use the identical word(s) lawfully approved as the name as its domain name whilst ever the business exists
  - If a business wants to use part of its name as a domain name it can do so if the ASIC identical names check does not show a conflict.
  - The referential integrity between names/ACN/ABN must be preserved for the reasons they were established.
  - The current process amounts to an elaborate form of identity theft.

#### **Adrian Stephan**

#### ***Appendix 4***

Small business can develop intellectual property (IP) that may have significant market potential, but if the business is just surviving, the pursuit of developing the IP over a long time (eg. perhaps in human or animal trials to ensure the technology works) is too costly (cost of creating a company and IP Lawyer) and is likely to be a disincentive even though there may be high commercial gains at the end of the process.

An alternative requirement for assistance needs to be based on the merits of the IP and market potential. This could be by a provisional patent examination project that may be in the form of a competition where entry is for relatively low income individuals and small business that have a potentially good idea that satisfies an IP search.

#### **Maurice White**

#### ***Appendix 5***

There is substantial overlap, duplication and triplication between the functions of many Government departments. For example, departments impacting on the activities of the Venom/Anti venom industry include:-:

1. Environment Australia.
2. AQIS
3. Animal & Plant Control Commission
4. National Parks & Wildlife South Australia
- 5 The 8 State wildlife authorities outside South Australia
6. The Vertebrate Pests Committee
7. Ethics Committee.
9. Local Government.

Currently Environment Australia (EA) restrict the export of venoms from native snakes and spiders by permit. To obtain the permit is tediously time consuming. When new species are added to the list it takes months for approval. Businesses are restricted to exporting a small number of venom glands per year.

Some of the controls are necessary and reasonable but operators fail to see why they need to duplicated and triplicated across different government departments. Below is a grid showing some of the crossovers.

| <b>Concern</b>                | <b>AQIS</b> | <b>E.A.</b> | <b>APCC</b> | <b>VPC</b> | <b>State<br/>Fauna</b> | <b>Local<br/>Govt.</b> |
|-------------------------------|-------------|-------------|-------------|------------|------------------------|------------------------|
| <b>Risk to Environment</b>    | Y           | Y           | Y           | Y          | Y                      |                        |
| <b>Risk to Prim. Industry</b> |             |             | Y           |            |                        |                        |
| <b>Security</b>               | Y           | Y           | Y           | Y          | Y                      |                        |
| <b>Disease potential</b>      | Y           |             |             |            | Y                      |                        |
| <b>Amenity</b>                |             |             |             |            |                        | Y                      |
| <b>Public safety</b>          |             |             | Y           |            |                        | Y                      |
| <b>Animal Welfare</b>         |             |             |             |            | Y                      |                        |

**Table 1.0 Overlap of Government Responsibilities with respect to Exotic snakes**  
 Peter Mirtschin

### ***Appendix 6***

Berwick Boarding Kennels & Cattery have been running successfully for nearly 50 years. With a major increase in business in the last 5 years. The area we are in is extremely low lying with very poor drainage. The council has said for many years that it will never be rezoned residential. We are currently Rural Residential (minimum 2 hectares). Now due to pressure from residents it is being reconsidered. We now have residential houses 200 metres from the front gate. There are approx 25 land owners with the only two Businesses opposing ours.

The Council cannot close us for no reason as we have 'prior useage' rights. The way they can close us down is through noise. If there are enough complaints it eventually goes to the Environmental Protection Authority.

What it means for us:

- Our business has a life span of 5 years at the most in this spot.
- We employ 2 part time staff and 7 casual staff over the holiday periods. Their jobs would be lost, as well as our own.
- We are licenced for 120 dogs and have room for 40 cats when full which is Christmas & Easter
- Other holiday times we are near capacity. If we go, where do these pets go? (to the streets!!).
- Eventually we will get noise complaints. It has happened to other Kennels in the same situation.
- We could sound proof, but the cost would be enormous and we could still be closed down.
- To relocate would cost easily 1 million dollars. That is if we could get a permit to build.
- Town planning have suggested Devon Meadows or Pearcedale to relocate to. We don't want that.
- To sell we would get land value only, nothing for a business that turns over \$250,000 year.
- Lastly we love what we do, its great for family life

The town planners keep saying to us that we are the difficult ones in all of this. They don't want to see us go or so they say. Unfortunately everyone has dollar signs in their eyes. Residents for their land, developers for what they can make and the council for the rates. We will hang on as long as possible unless something turns up in the meantime. We have become quite philosophical about it all. What will be will be.

**Isobel Caulfield**

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