



## Inquiry into the provisions of the Workplace Relations Amendment (Small Business Employment Protection) Bill 2004

### 1. Introduction

- 1.1 The Australian Nursing Federation (ANF) welcomes this opportunity to make this submission to the Senate Employment, Workplace Relations and Education Committee inquiring into the Workplace Relations Amendment (Small Business Employment Protection) Bill 2004.
- 1.2 The ANF is the national union for nurses in Australia with branches in each state and territory. The ANF is also the largest professional nursing organisation in Australia. The ANF's core business is the industrial and professional representation of nurses and nursing in Australia.
- 1.3 The ANF's 145,000 members are employed in a wide range of enterprises in urban, rural and remote locations in the public, private and aged care sectors, including hospitals, health services, schools, universities, the armed forces, statutory authorities, local government, offshore territories and industries. A significant number of nurses work in small businesses including aged care facilities, general medical practice, and private medical rooms and in many small community and domiciliary facilities.
- 1.4 The ANF participates in the development of policy in nursing, nursing regulation, health, community services, veterans affairs, education, training, occupational health and safety, industrial relations, immigration and law reform.

1.5 Nurses as members of the ANF are mainly employed under the awards of the Australian Industrial Relations Commission except for nurses employed in New South Wales and in the private sectors of Queensland, where industrial systems in the relevant state cover them.

## 2. Workplace Relations Amendment (Small Business Employment Protection) Bill 2004

2.1 The ANF opposes the Bill and subject to an order of an industrial tribunal consider that all employees should be entitled to severance payments when retrenched.

2.2 The negative impacts of an employee losing their job due to a retrenchment does not diminish simply because the employee is employed in a business which employs less than 15 employees.

2.3 It is now widely accepted that the provision of severance payments is to compensate employees who are made redundant and incur losses as a result of the termination of employment including:

- the trauma associated with the termination;
- the economic and social cost for individuals and their families of forced withdrawal from the labour force, often for long periods of time while seeking alternative employment;
- the loss of non-transferable credits such as sick pay and long service leave;
- the cost associated with loss of employment security, loss of seniority, and diminished social status;
- the cost associated with seeking alternative employment and the stress and insecurity associated with job seeking and possible lower job satisfaction and inferior conditions once alternative employment is obtained.

- 2.4 At the time of introducing severance payments into federal awards as part of the TCR test case decision<sup>1</sup> the Australian Industrial Relations Commission held that statutory and labour market conditions did not justify an obligation on small business employers to severance payments.

Over the last 20 years the labour market has changed considerably and the impact of retrenchment across all businesses, and for all employees, has become more volatile. In addition the federal government now proposes extensive changes to federal dismissal and termination laws as contained in the Workplace Relations Amendment (Fair Dismissal Reform) Bill 2004, whereby employers with fewer than 20 employees will not be subject to unfair dismissal regulation.

- 2.5 The combined effect of these two Bills should they become law will mean that employers with fewer than 15 employees will be able to dismiss employees and such employees will have no recourse to an industrial tribunal nor entitlement to compensation.
- 2.6 The primary argument proffered by the federal government in support of this Bill is that the cost imposed on small business to pay severance is prohibitive and consequently will be a major disincentive to employment in small business sectors.
- 2.7 This argument was considered in detail by the Full Bench of the Australian Industrial Relations Commission in March 2004 when hearing applications to vary the standard provisions governing the termination of employment in federal safety net awards. During these hearings major employer organisations, including the ACCI and the AIG, in concert with federal government, advanced arguments that small businesses lacked the financial capacity to bear the costs of severance payments.

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<sup>1</sup> Termination, Change and Redundancy Case, Print F6230; (1984) 8 IR 34

2.8 In rejecting these arguments the Commission held:

- That small businesses are generally profitable;
- That many small businesses make severance payments despite the absence of the legal liability to do so;
- That there is no evidence that small business employers who are required to observe severance payments are or will be less profitable or likely to fail<sup>2</sup>.

### 3. Conclusion

The Australian Nursing Federation is implacably opposed to further amendments to the Workplace Relations Act 1996 which continue to disadvantage employees, many of whom now have little protection afforded by industrial law.

The ANF would also like to respectfully convey to the Inquiry our strong concerns with regard to the apparent disregard the federal government has for the extensive and measured findings of the Australian Industrial Relations Commission in introducing this Bill to remove the exemption for small business employers. To override a decision of the Full Bench of the Australian Industrial Relations Commission simply because the government does not approve of the outcome sends a very strong message to the Australian community that the government does not value or appreciate the importance of independent tribunals.

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<sup>2</sup> Australian Industrial Relations Decision PR032004 at Para 222.