

Unfair Dismissals

AUSTRALIAN DEMOCRATS ACTION PLAN UNFAIR DISMISSALS WORKPLACE RELATIONS

“Dr David Peetz:...the implication is that the strong growth of employment in 2006 is unrelated to the abolition of the unfair dismissal laws...”

Senator Andrew Murray
Spokesperson on Workplace Relations

The Democrats have consistently supported process improvements to unfair dismissal (UFD) laws that will increase fairness and efficiency, and reduce costs, but have also consistently opposed changes that materially impact on a fundamental right of employees to fair treatment, especially if one group of (big business) employees have this right to contest unfair dismissals and another (small business employees) do not.

The Democrats do not accept Government claims that exempting small business from unfair dismissal laws creates large numbers of new jobs. The Democrats do accept that complex loosely drafted and costly unfair dismissal processes are highly undesirable. Both small business and employees do have a need for rapid low cost dispute resolution.

In consequence the Democrats negotiated changes to federal unfair dismissal laws that saw the number of federal unfair dismissal applications fall by over 60% since 1996, 50% after the 1996 reforms and a further 12% after the 2001 reforms.

Democrats Action Plan

- Legislate a genuine single national unfair dismissals system negotiated with the states and territories, so that the loose state systems are tightened up under one federal regime;
- Re-introduce UFD laws for small business; and,
- Ensure UFD systems are low cost and non-legalistic with a prompt resolution of disputes, and including a process to weed out vexatious and frivolous claims.

Issue One: Unfair Dismissals history and problems

ILO Convention 158, ratified by Australia, holds that an employer must have a “valid reason” for dismissing an employee. In 1996 there were about 15 000 federal unfair dismissal applications. Prior to the 1996 federal election the Democrats agreed with the Coalition that this was too high because of unmeritorious applications and that application rules needed tightening. The Coalition promised to replace Labor's federal unfair dismissal laws with a “fair go all round” for employers and workers.



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Last updated 14/08/2007

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The Coalition's 1996 Workplace Relations Bill did not exempt any small business employees from UFD, although it was much tougher than Labor's rules. In amendments, the Democrats put back a number of protections, and initiated others, such as the global no-disadvantage test.

From 1997 the Coalition began a campaign to exempt small business from unfair dismissal laws, even although annually there were only a little over 2 000 small business applications for UFD under federal law. WA was a good example of the real situation. These figures were provided by the federal government.

- WA 1996 total federal UFD applications 1875.
- WA 2003 total federal UFD applications 316, of which small business constituted 79.
- WA 1996 UFD applications under state law 918
- WA 2003 UFD applications under state law 1314

The Coalition talked of 'go-away' money being a common practice but academic and Senate research shows no evidence of this happening on any scale. It may exist, but there is absolutely no empirical evidence that it exists to the extent implied or asserted.

The most comprehensive research undertaken to date by Senior Lecturer Paul Oslington and PhD student Benoit Freyens at the University of NSW School Of Business in 2005 found that ending unfair dismissal laws for employers with fewer than 100 employees would at its most optimistic estimates create only 6,000 jobs, not the 77,000 claimed by the Howard Government.

Issue Two: Improving Unfair Dismissal Process

In 1996 the Australian Democrats negotiated with the Federal Government to create new laws to provide a 'fair go all round' for both employers and employees. The Democrats supported further amendments to improve process in 2001, whilst opposing more radical Government reforms.

The 1996 amendments included:

- hearings to be heard in the AIRC instead of the Federal Court, making proceedings less formal, expensive and time-consuming;
- disincentives to speculative or unmeritorious unfair dismissal claims;
- costs can be awarded against an employee found to have made a frivolous or vexatious claim;
- employees must pay a \$50 application fee;
- the viability of the employer is to be taken into account in deciding whether to award damages in lieu of reinstatement; and,
- greater restrictions are placed on probationary, casual and specified term contract employees applying for unfair dismissal relief.



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The most recent 2001 amendments included:

- a 'default' three month qualifying period of employment before unfair dismissal claims can be brought by new employees; and,
- greater rigour in the processing of unfair dismissal claims by the Australian Industrial Relations Commission (AIRC).

The amendments resulted in improved processes, reduced litigation and reduced delays, addressing small business concerns without impairing employees' substantive rights.

Federal UFD applications were reduced by 50 per cent after the 1996 reforms and a further 12 per cent after the 2001 reforms.

Issue Three: Exempting Small business from Unfair Dismissal

The Coalition knows that many businesses want to hire and fire workers at will regardless of whether there is a valid reason or not. On 11 occasions the Government attempted to amend the 1996 Act or related regulations to exempt all employees in workplaces of less than 20 employees from unfair dismissal rights. These attempts were consistently rejected by the Democrats, Labor and others in the Senate.

The Coalition Government repeatedly sought to justify its attempts to exempt small business from unfair dismissal laws by arguing that they deter small business from recruiting employees, and place a greater burden and cost on small business. These arguments were supported by business.

The Democrats have rejected these arguments on the following grounds:

- fundamental concerns with reducing the rights of employees employed by small business, on human rights and equity grounds;
- contrary to government rhetoric unfair dismissal exemptions have not had an impact on unemployment figures, which continued to fall the entire period UFD applied;
- much of the evidence used to support the Governments assertions about job creation is flawed; and,
- unfair dismissal applications were most often pursued under state laws, not federal law. Under the federal law, most applications were in fact made against larger companies, rather than small business.

The Democrats believe that contrary to the Federal Government's assertions, exempting small business from unfair dismissal laws does not generate jobs on a large scale; only changes to trade practices law, red tape, employment policy and economic policy will do this.



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