ISSUE ANALYSIS

THE CENTRE FOR INDEPENDENT STUDIES

No. 26 20 August 2002

Poor Laws (1)

The Unfair Dismissal Laws and Long-term Unemployment

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EXECUTIVE SUMMARY

Joblessness is a major cause of poverty. Poverty will be alleviated significantly by engaging the poor in gainful employment. Yet persistent unemployment, especially persistent long-term unemployment, suggests that there may be too few jobs to pursue such a policy option. Despite strong economic growth over the past near-decade, Australia's unemployment rate remains high at over 6% while the long-term unemployment rate was a staggering 34.2% (as of April 2002).

A possible explanation for Australia's unemployment problem is the over-regulation of the labour market. This includes the unfair dismissal laws in the Commonwealth Workplace Relations Act 1996. The unfair dismissal laws are a potential deterrent both to firing and to hiring. An unfair dismissal claim can cause employers considerable financial and mental distress. Sometimes it is easier for employers not to sack anybody in the first place. Employers may also be reluctant to take on additional staff. If a new recruit turns out to be unsatisfactory, it might already be too late for employers to fire him or her without paying dearly for such action. In other words, the unfair dismissal laws to a certain extent favour the 'insiders' (those already with jobs) over the 'outsiders' (those without jobs).

The Workplace Relations Amendment (Fair Dismissal) Bill 2002, introduced on 13 February this year, is intended to exclude small businesses from the unfair dismissal laws and thereby to encourage job creation. Such an exemption is sensible because the unfair dismissal laws have a particularly adverse effect on small businesses without enough resources to cope with unfair dismissal allegations. Survey results indicate that small business employment would have been higher had it not been for the unfair dismissal laws.

To boost the number of available jobs, and thus to combat long-term unemployment, the unfair dismissal laws need to be amended in such a way that small businesses will feel more confident about taking on new staff. Improving small business employment, although not a panacea, is nevertheless one step towards the broader goal of job creation.

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Introduction

Joblessness is a major cause of poverty. Australia's social policy community, while sharply divided on the extent of poverty, nevertheless shares a view that the risk of being poor is greater for those out of work. Poverty, therefore, will be alleviated significantly by engaging the poor in gainful employment.

The problem is that there appear to be too few jobs to pursue such a policy option. Persistent unemployment points to a shortage of jobs. Although Australia's unemployment rate has fallen significantly since hitting an historic high in 1993 (10.7%), the latest figure, 6.5% (June 2002), is still too high.[1] Persistent, high unemployment is generally associated with economic recession, yet Australia has experienced a near-decade of strong economic growth. From 1992 through to 2001, the Australian economy grew at an average annual rate of 4.4%.[2] For the first quarter of 2002, it recorded about the highest growth rate (4.2%) among industrial countries.[3] This robust economic performance has yet to be translated into an equally robust labour market performance.

By contrast, the United States and Britain have managed to hold unemployment below 6% despite their relatively slower economic growth. The economic growth rate over the past decade was, on annual average, 3.7% and 2.6% for the United States and Britain respectively.[4] The latest unemployment rate, however, was 5.9% for the United States (June 2002) and 5.2% for Britain (February to April 2002).[5]

Of even greater concern is the long-term unemployment rate—that is, the proportion of long-term unemployment to total unemployment. Each year between 1992 and 2001, 40.7% of all unemployed Australians were on average out of work for more than six months.[6] Britain's long-term unemployment rate sharply declined after the middle of the 1990s though it rose again to 39.4% in 2001.[7] The US long-term unemployment rate from 1992 through to 2001 was markedly lower: 13.0% on annual average.[8]

Labour market deregulation is instrumental in boosting jobs and thus bringing unemployment down.

This paper seeks to explain Australia's relatively poor record in job creation, and relatively high unemployment and long-term unemployment rates, despite a near-decade of strong economic growth. One possible explanation is that generous unemployment benefits create a disincentive for the unemployed to look for work. This disincentive effect is then exacerbated by a shortage of jobs, caused largely by over-regulation of the labour market. Labour market regulation takes a number of forms with a number of consequences. Strict employment protection laws that aim to provide job security for those already in jobs might inadvertently prevent those without jobs from entering employment. A high minimum wage raises labour costs and can thereby discourage firms from hiring. Extensive employee entitlements such as annual leave, long service leave and workers' compensation have a similar effect. Labour market deregulation is therefore instrumental in boosting jobs and reducing unemployment.

The *Poor Laws* series, which The Centre for Independent Studies is producing over the next few months, will examine Australia's labour market policies and their implications for welfare reform. This paper, the first of the series, argues that the unfair dismissal provisions in the Commonwealth Workplace Relations Act 1996 (the 1996 Act) have an adverse effect on employment particularly in the small business sector. The 1996 Act solely administers unfair dismissal claims that occur in the federal jurisdiction. For this reason, unfair dismissal laws provided by individual state jurisdictions are not discussed here. Nonetheless, the general conclusion of this paper is relevant to State laws too.

Long-term unemployment and employment protection

Australia's annual average long-term unemployment rate from 1992 through to 2001 was over three times as high as that of the United States. The latest available figures tell a similar story: 11.2% for the United States (the monthly average for 2001) and 34.2% for Australia (as of April 2002).[9] The average duration of unemployment, furthermore, is 13.2 weeks for the United States and a staggering 49.3 weeks for Australia.[10] Long-term unemployment is doubtless far more widespread in Australia than in the United States.

The low long-term unemployment rate in the United States suggests a successful record in job creation—though this is a regular source of criticism, not praise. Jobs being created in the United States, it is often claimed, are service-sector jobs with low wages and poor working conditions, which in turn widens income inequality. A recent OECD study,

however, debunks this 'Mac job myth'.[11] As its comparisons of working conditions, job satisfaction and pay demonstrate, good jobs are not primarily located in the goods-producing sector; there are also many in the service sector. The OECD study further argues that the high overall employment rate in the United States was driven by the growth not only of poorly paid but also of well paid service-sector jobs; and that jobs in relatively well paid occupations and industries increased far more significantly than poorly paid jobs.

Why is Australia not as successful in creating jobs as the United States? Several cross-country studies have demonstrated that higher employment protection, including but not limited to unfair dismissal laws, reduces flows into and out of unemployment and thereby prolongs the spell of unemployment.[12] Nordic and South European countries dogged by pervasive long-term unemployment typically have strict employment protection regulations. Their antithesis is the United States, which is renowned for its highly deregulated labour market. The overprotection of employment, then, may be partly to blame for Australia's long-term unemployment problem.

Under employment protection, labour force participants, once jobless, face a greater risk of remaining unemployed and becoming part of the long-term unemployment statistics.

Employment protection is a potential deterrent both to job destruction (employment reduction caused by businesses that contract or shut down) and to job creation (employment growth created by businesses that expand or start up). Strict employment protection regulations incur costs to employers in the form of exorbitant severance pay, for example. These costs may be so prohibitive that employers cannot afford to fire an employee and hire another. They might also need to seek costly legal advice, especially if the regulations are too complex—as is clearly the case with the two-volume, 700-page 1996 Act. There are also non-financial costs. Employers might have to take a considerable amount of time from their primary duties while trying to understand and meet cumbersome procedural requirements that often come with strict employment protection regulations. Moreover, arbitration proceedings are mentally draining. Sometimes it is easier for employers simply not to sack anybody even if he or she is not up to the job.

At the same time, employers might be reluctant to hire new staff. Recruitment entails a great deal of uncertainty; neither a spotless résumé nor an impeccable job interview guarantees good performance upon appointment. If a new recruit turns out to be unsatisfactory, it might already be too late for employers to fire him or her without paying dearly for such action. Under strict employment protection regulations, therefore, risk-averse employers may choose to encourage their existing employees to work harder and/or longer, thereby holding at a minimum the number of possible firings.

So employment protection to a certain extent favours the 'insiders' (those already with jobs) over the 'outsiders' (those without jobs). Labour force participants, once jobless, therefore face a greater risk of remaining unemployed and becoming part of the long-term unemployment statistics. Young people without adequate education, training or experience are at a particular disadvantage.[13]

Employment protection can also hurt insiders by locking them in jobs to which they are ill-suited. Consider, for example, a sales assistant with no aptitude for customer service. Strict employment protection regulations would give his or her employer little choice but to continue his or her employment. Nor would the sales assistant actively look elsewhere for some other job because there would be very few available jobs under strict employment protection regulations. The sales assistant thereby would miss out on the opportunity to find a position that might better suit him or her.

Opponents of labour market deregulation in Australia often propose, as an alternative, education and training for the unemployed. In their view, the majority of jobseekers remain jobless simply because they do not have sufficient skills. Yet experiences across OECD countries with public training programmes for the unemployed are at best mixed.[14] Although they somewhat increased earnings and employment for adult women, the outcomes for adult men were much less encouraging. Worse, most training programmes for youth turned out to be a waste of money. The reason, however, why some groups but not others appear to gain from training programmes is not yet clear.

The unfair dismissal laws

Until the enactment of the Industrial Relations Reform Act 1993 (the 1993 Act) on 24 March 1994, federal unfair dismissal laws did not exist apart from those affecting public

sector employees. Opposition to the 1993 Act was fierce for a number of reasons. For example, the definition of an unfair dismissal—a termination that is 'harsh, unjust or unreasonable'—was criticised as nebulous and wide-open to interpretation. Moreover, the initial burden of proof was on employers. Small businesses, given their relatively scarce resources, were therefore apprehensive about the potential deleterious effects of the 1993 Act.[15]

Many attempts were made to reduce the scope of the unfair dismissal laws. Two months after coming to power at the 1996 federal election, the Coalition government introduced the Workplace Relations and Other Amendment Bill 1996, which, on 31 December that year, became the 1996 Act. The revised unfair dismissal laws, found in Division 3, Part VIA, were groundbreaking in a number of respects. Among other things, a 'fair go all around' was accorded both to employers and to employees in the handling of unfair dismissal applications (Section 170CA(2)). Yet the amendments were widely considered inadequate.

Small businesses are usually short of money, staff and time. They simply cannot afford unfair dismissal claims.

The Coalition government has made several vain attempts, in particular, to exempt from the unfair dismissal laws small businesses with fewer than 15 employees.[16] The Workplace Relations Amendment (Fair Dismissal) Bill 2002, introduced on 13 February this year, represents yet another attempt to exclude small businesses from the unfair dismissal laws (Item 1). This Bill, unlike its predecessors, defines a small business as a business with fewer than 20 employees. It does not affect State unfair dismissal laws or Commonwealth legislation concerning unlawful dismissals, which is to be dealt with by a separate bill. Nor does it apply to persons hired before the amendments come into effect (Item 6).

The Coalition government argues that the Bill, if passed, will encourage job creation. The Labor Party and the Democrats, on the other hand, steadfastly oppose the Bill, contending that the unfair dismissal laws have little to do with unemployment. While the Senate Committee on Employment, Workplace Relations and Education Legislation found the case for the small business exemption to be persuasive and therefore commended the Bill,[17] the Senate voted it down on 27 June 2002.[18] At the time of writing, the Bill is back on the table in the House of Representatives.

Effects on small business employment

Small businesses need an exemption because high employment protection can discourage both job destruction and job creation. Firing, whether it involves existing employees or recent recruits, may cost employers dearly if followed by unfair dismissal claims. The operators of larger businesses might be able to cope better with them because they have greater financial and human resources to take care of expensive and time-consuming arbitration processes. The operators of small businesses, by contrast, are usually short of money, staff and time. They simply cannot afford unfair dismissal claims. It is therefore a reasonable assumption that strict unfair dismissal laws significantly reduce hiring as well as firing in small businesses.

Small business is an important source of employment. From 1993-94 through to 1998-99, the small business sector accounted for approximately half of total employment in Australia.[19] This becomes evident when comparing the net job turnover in the small business sector with that in the medium and large business sectors.[20] Net job turnover is the difference between the number of jobs created and the number of jobs destroyed. In other words, it is a measure of net job growth. The small business sector overall experienced stronger job growth than the medium and large business sectors combined over the years concerned.

From this, it is not clear whether the changes in employment protection policy have had any effect on the level of employment. There is, however, ample survey evidence that the unfair dismissal laws have been a major hindrance to effective staff management in the small business sector.

In 1999, the Australian Chamber of Commerce and Industry (ACCI), in its quarterly Survey of Investor Confidence, asked more than 2,300 employers Australia-wide whether the unfair dismissal laws had any bearing on their hiring decisions during the previous 12 months.[21] The majority, or 53.9%, of small businesses, as compared to 47.7% of medium businesses and 28.2% of large businesses,[22] indicated that they might have hired more staff had it not been for the unfair dismissal laws.[23]

ACCI's pre-election survey of November 2001 asked more than 2,500 employers across Australia to rate the importance of 63 business-related issues.[24] According to small business employers, the unfair dismissal laws were the fifth most important issue. Of equal concern, medium business employers and large business employers ranked the issue high—third and seventh, respectively.

One survey by CPA Australia does dispute these findings. The survey, which targeted 600 small businesses across Australia, took place in February 2002.[25] Only 5% of respondents considered the unfair dismissal laws a major impediment to hiring new staff.[26] However, even if this very modest figure is accepted, the implications for employment are still considerable. According to an ABS estimate, there were 1,051,500 small businesses in Australia in 1998-99.[27] This means that if only 5% of small businesses employed just one extra person, over 50,000 jobs would have been created.

Clearly, employment in the small business sector would rise significantly in the absence of the unfair dismissal laws.

The possible consequences of dismissals

The 1996 Act provides that the Australian Industrial Relations Commission (AIRC), upon receiving an unfair dismissal application, must first attempt to settle it by conciliation (Section 170CF(1)). If conciliation fails, the applicant may choose to proceed to arbitration (Section 170CFA(1)). During arbitration proceedings, the AIRC may find a dismissal 'harsh, unjust or unreasonable' on the grounds that: (1) there was no valid reason for the dismissal (for example, incompetence or misconduct on the employee's part); (2) the employee was not notified of any such reason; (3) the employee was given no opportunity to respond to the employer's concern; and/or (4) the employee who was terminated due to his or her unsatisfactory performance had been given no warnings about it (Section 170CG(3)). The AIRC subsequently may make orders for remedies including reinstatement of the employee and an appropriate amount of payment in lieu of reinstatement (Section 170CH). While all orders are binding, there are also rights of appeal to the Full Bench of the AIRC (Section 45, Division 4, Part II).

If only 5% of small businesses in Australia employed just one extra person, over 50,000 jobs would have been created.

An examination of the disputes that have come before the AIRC since 1997 confirms that small business owners have every reason to feel uneasy about possible unfair dismissal allegations. Regardless of the size of businesses involved, the total number of unfair dismissal and unlawful termination applications lodged per year following the enactment of the 1996 Act has been on average 7,500 to 8,500 (Table 1 overleaf).[28] Approximately a third of these unfair dismissal and unlawful termination applications were made against small business employers (Table 2 overleaf).[29] Most cases were settled by conciliation; yet once brought for arbitration, the odds that an application was found against the employer were about six out of 10 (Table 3 overleaf). According to a business adviser, the cost of an unfair dismissal claim for an employer is seldom less than $3,000 since employees have no incentive to reconcile without recovering their legal fees and receiving a certain level of 'compensation'.[30] This seems to be the case even with unmeritorious applications.

Some unfair dismissal allegations are apparently without foundation, as seen in the examples provided in the box on the next page.[31] All the three unfair dismissal claims were eventually dismissed. This should not be taken to mean that they had no adverse effects on the employers. Under the current laws, it is relatively easy for sacked employees to initiate unfair dismissal applications. And as noted earlier, any unfair dismissal claim causes at least some financial pressure for the employers concerned. It can wreak havoc on a small business whose operational budget may be very limited. In short, those small business owners who disapproved of the unfair dismissal laws in the aforementioned surveys were by no means being irrational.

Concluding remarks

The unfair dismissal laws reduce employment opportunities in the small business sector—a possible rich source of jobs. This is likely to contribute to the long-term unemployment rate by putting jobseekers at greater risk of remaining unemployed. To boost the number of available jobs, and thus to combat long-term unemployment, the unfair dismissal laws

Table 1. Total Number of Unfair Dismissal/Unlawful Termination Applications Lodged under the 1996 Act

State/Territory	*1997*	*1998*	*1999*	*2000*	*2001*
New South Wales	1,115	1,383	1,274	1,388	1,721
Queensland	623	309	365	416	458
Western Australia	272	303	455	401	369
South Australia	273	284	214	199	170
Tasmania	117	242	129	127	140
Victoria	4,527	5,134	4,627	4,606	4,798
Australian Capital Territory	260	249	230	236	243
Northern Territory	277	233	267	236	258
Total	7,464	8,137	7,570	7,609	8,157

Note: The figures for 1997 are based on weekly tallies of lodgements while the figures for 1998 to 2001, on monthly tallies. Therefore, they may not be exactly comparable.
Source: *House of Representatives Official Hansard*, No. 4, Tuesday, 19 March 2002 (Canberra: The Parliament of Australia, 2002), 1612.

Table 2. Number of Unfair Dismissal/Unlawful Termination Applications by Business Size

	1998	*1999*	*2000*	*2001*
Total No. of Applications	8,137	7,570	7,609	8,157
Total No. of Respondents Whose Business Size Is Known (a)	2,979	2,554	2,471	2,666
Total No. of Small Business Employers among (a)	1,041	849	795	870
% of Small Business Employers among (a)	34.9	33.2	32.2	32.6

Note: The figures are derived from surveys by the Australian Industrial Registry of employers involved in unfair dismissal and unlawful termination cases. They are not complete because employers provide answers solely on a voluntary basis.
Source: *House of Representatives Official Hansard*, No. 4, Tuesday, 19 March 2002 (Canberra: The Parliament of Australia, 2002), 1613-14.

Table 3. Outcomes of Unfair Dismissal/Unlawful Termination Applications

Outcome[1]	*1997-98*	*1998-99*	*1999-00*	*2000-01*	*Total*
Dismissed for Lack of Jurisdiction or Out of Time	239	259	238	214	947
Settled by Conciliation	4,094	4,870	4,168	4,447	17,579
Arbitrated (a)	651	277	346	291	1,565
In Favour of the Employee (b)[2]	497[4]	124	150	149	920
In Favour of the Employer[3]	154	153	196	142	645
% of (b) among (a)	76.3	44.8	43.4	51.2	58.8

Notes: (1) Other outcomes reported by the AIRC include applications withdrawn, settled or discontinued prior to conciliation; applications lapsed due to no election to proceed or to election not to proceed; applications withdrawn, settled or discontinued after conciliation but prior to arbitration; and yet to be finalised (2) Includes decisions by which either reinstatement or compensation in lieu of reinstatement was ordered and decisions by which no remedy was ordered despite a finding for a breach; (3) Includes decisions by which an application was dismissed on the merits; (4) Includes 282 applications relating to a single employer.
Source: *House of Representatives Off1icial Hansard*, No. 4, Tuesday, 19 March 2002 (Canberra: The Parliament of Australia, 2002), 1615.

EXAMPLES OF UNFAIR DISMISSAL ALLEGATIONS

- An animal attendant, X, was dismissed after a fistfight with his colleague, Y. The exchange appeared to have been the upshot of a division within their workplace. Following an investigation, X's employer terminated the employment of both X and Y. X subsequently lodged an unfair dismissal application. His employer contended that, although X had ample opportunity to walk away from the fight initiated by Y, his response went beyond mere self-defence. In X's view, the incident was his employer's fault because it should have terminated long time ago the employment of those in Y's group. The AIRC found that the reason for X's termination was valid and dismissed his application (Print P7207, 3 December 1997).
- Z, a salesperson at a commercial storage facility, was dismissed and filed an unfair dismissal application. Z's job description was to 'source and develop new business opportunities via new and existing clients'. He successfully secured an order worth $1,300 in the third month of his employment, but failed to conclude any other sales for the rest of his six-month tenure. During the appeal process, the AIRC determined that Z was sacked due to his lack of capacity—a valid reason for termination. The appeal was dismissed (Print S5897, 11 May 2000).
- W, a sales assistant at an optical aids retailer, was summarily dismissed after allegedly having misappropriated money from a customer. The customer one day visited the retailer in order to collect a new pair of prescription glasses. He paid a female sales assistant in cash. When he returned to the store two months later, another sales assistant discovered that, according to the store's records, his glasses were still awaiting collection and payment. He made a positive identification of W during the store's investigation. W refused to meet him face-to-face while continually denying the allegations. The arbitration by the AIRC found the store's investigation to be sufficient and procedurally fair and evidence against W to be convincing. W's application was dismissed (PR913552, 1 February 2002).

need to be amended in such a way that small businesses will feel more confident about taking on new staff.

As many opponents of labour market deregulation argue, unfair dismissal legislation might provide greater job security for those already employed; but it does so at the expense of employment of outsiders. An effort to keep the unfair dismissal laws tight is tantamount to an effort to keep the unemployed out of work.

Of course, improving small business employment, as with any single policy measure, is not a panacea for the problem of long-term employment. It is, however, one step towards the broader goal of job creation.

An effort to keep the unfair dismissal laws tight is tantamount to an effort to keep the unemployed out of work.

Endnotes

1 ABS (Australian Bureau of Statistics), *Labour Force, Australia, Preliminary*, June 2002, ABS Cat. No. 6202.0, http://www.abs.gov.au; Morgan Mellish, 'Job Numbers Cloud Rates Outlook', *Australian Financial Review* (12 June 2002).

2 Derived from *OECD Labour Market Statistics*, 2001, CD-ROM (Paris: OECD, 2002) and *OECD Economic Outlook*, No. 71 (Paris: OECD, 2002).

3 ABS, 'Key National Indicators', http://www.abs.gov.au.

4 Derived from *OECD Labour Market Statistics*, 2001 and *OECD Economic Outlook*, No. 71.

5 BLS (Bureau of Labor Statistics), US Department of Labor, 'Latest Numbers', http://www.bls.gov; ONS (Office for National Statistics), 'A Selection of the Latest Economic Indicators', http://www.statistics.gov.uk/instantfigures.asp.

6 Derived from *OECD Labour Market Statistics*, 2001 and ABS, *Labour Force, Australia*, January-December 2002, ABS Cat. No. 6203.0, Table 25.

7 Derived from *OECD Labour Market Statistics*, 2001 and ONS, *Labour Market First Release Historical Supplement*, '9 ILO Unemployment by Age, Duration and Sex', http://www.statistics.gov.uk/themes/labour_market/LMS_FR_HS.asp.

8 Derived from BLS, 'Labor Force Statistics from the Current Population Survey', http://data.bls.gov/cgi-bin/surveymost.

9 BLS, 'Labor Force Statistics from the Current Population Survey', http://www.bls.gov/cps/home/htm; ABS, *Labour Force, Australia*, April 2002, ABS Cat. No. 6203.0.

10 As above.

11 See OECD, 'The Characteristics and Quality of Service Sector Jobs', *OECD Employment Outlook*,

2001 (June 2002).

[12] See, for example, OECD, 'Employment Protection and Labour Market Performance', *OECD Employment Outlook*, 1999 (June 2000).

[13] Graeme S. Dorrance and Helen Hughes, *Working Youth: Tackling Australian Youth Unemployment* (Sydney: The Centre for Independent Studies, 1996), 5, 65-66.

[14] John P. Martin, *What Works among Active Labour Market Policies: Evidence from OECD Countries' Experiences*, Labour Market and Social Policy Occasional Papers No. 35 (Paris: OECD, 1998), 17.

[15] *Bills Digest* No. 79 2001-02 (Canberra: Department of the Parliamentary Library, The Parliament of Australia, 19 February 2002), 3-4.

[16] These include the Workplace Relations Amendment Bill 1997, the Workplace Relations Amendment Bill No. 2, the Workplace Relations Amendment (Unfair Dismissals) Bill 1998, and the Workplace Relations and Other Legislation Amendment (Small Business and Other Measures) Bill 2001.

[17] Senate Employment, Workplace Relations and Education Legislation Committee, *Report on the Provisions of Bills to Amend the Workplace Relations Act 1996* (Canberra: The Parliament of Australia, May 2002), 18.

[18] 'Government Lays Ground for Double Dissolution', *The Sydney Morning Herald* (28 June 2002).

[19] ABS, *Small Business in Australia*, 1999, ABS Cat. No. 1321.0, Table 2.2.

[20] ABS defines small businesses as businesses employing less than 20 people; medium businesses as businesses employing more than 20 but less than 200 people; and large businesses as businesses employing more than 200 people.

[21] Quoted in *Small Business Coalition Submission to the Senate Employment, Workplace Relations and Education Committee* (8 April 2002), http://www.aph.gov.au/Senate/committee/eet_ctte/wrbills2002/submissions/sublist.htm.

[22] Medium and large businesses refer here to businesses with 20 to 99 employees and businesses with more than 100 employees, respectively.

[23] Since the survey was conducted nationwide, the respondents would have in mind both state and federal unfair dismissal laws.

[24] ACCI, *What Small Business Wants: ACCI's Pre-election Survey Results* (Barton, ACT: ACCI, 2001).

[25] CPA Australia, *Small Business Survey Program: Employment Issues* (Melbourne: CPA Australia, 2002), 7. CPA Australia is a professional organisation of Certified Practicing Accountants.

[26] As above, Table 7. Multiple responses were allowed.

[27] ABS, *Small Business in Australia*, 1999, ABS Cat. No. 1321.0, 1.

[28] Unlawful terminations are terminations for reasons such as temporary absence from work due to illness or injury, union membership or non-membership, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction and social origin (the 1996 Act, 170CK(2)). They are included in Tables 1 to 3 because data solely regarding unfair dismissal applications could not be isolated.

[29] Due to data limitations, small businesses refer here to businesses employing fewer than 15 people, as opposed to 20 people.

[30] Personal communication, 5 July 2002.

[31] For privacy reasons, personal and business names are suppressed in these examples. The AIRC decision code and date are provided in the parenthesis after each example.

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