

## **Workplace Relations Framework**

### **Public inquiry**

### **Submission from Australian Dismissal Services**

The Australian Government has asked the Productivity Commission to undertake a public inquiry to examine the performance of the workplace relations framework and identify improvements to it.

### **Scope of this submission**

This submission only makes recommendations about the unfair dismissal system.

### **About Australian Dismissal Services**

Australian Dismissal Services (ADS) is a privately owned dismissal service business.

We specialise in helping people navigate their way through the employment separation event.

ADS provide simple, straightforward, plain English, practical assistance to people who, regardless of their employment status, find themselves experiencing the employment separation event.

ADS receives no public funding, is not an income tax exempt employer group (registered industrial organisation), or a Law firm.

ADS clients may be either Applicants (1 and 2, below) or Respondents (3 and 4, below);

1. An ex-employee seeking to make an unfair dismissal claim; or
2. An employee seeking advice on how to fairly discipline or dismiss another employee; or
3. A business owner seeking advice on how to fairly discipline or dismiss an employee; or
4. A business owner seeking to defend an unfair dismissal claim.

ADS takes the view that traditional Australian industrial relations ideology, being either “for the employees” or “for the employers”, has no place in the modern economy. These attitudes are outdated and don’t reflect people’s employment mobility. Today’s worker can be tomorrow’s manager or the next day, a business owner.

We take the view that there is a set of rules, and people need help to navigate those rules, and when those people seek our assistance we will assist, regardless of their current employment status.

It is ADS policy to grant every person that rings our office 15 minutes of free, verbal advice.

Within 15 minutes, we can tell whether a person has a case to prosecute or defend, and whether pursuance is commercially viable.

Approximately 60% of the people that ring our call centre are advised they have no case to prosecute.

Very often, we find, these people simply need someone to help them emotionally process the dismissal. Within 15 minutes, we encourage these people to pick themselves up, dust themselves off and seek alternative employment as quickly as possible.

### **About the Australian Dismissal System**

If a person takes the view that businesses should be able to sack workers at will without any recourse whatsoever, then the Australian unfair dismissal system will not please them.

However, if a person takes the view that there should be some system in place, that it should be easy to access, efficient and relatively low cost, then when the statistics are examined, the Australian unfair dismissal system is reasonably good.

The dismissal system comprises three stages;

1. Conciliation Conference.
2. Arbitration Hearing, including any subsequent appeals.

The Fair Work Commission Annual Report 2013-2014 shows in that year, 14,796 unfair dismissal applications were lodged.

The vast majority of these claims were settled before, during or after Stage 1, Conciliation. Conciliation is a phone conference, held with the Fair Work Commission. A period of time no longer than 1.5 hours is allocated by the Commission for Conciliation. Cases are listed and heard with weeks of application.

Only 1,200 (less than 10%) of the claims proceeded past Conciliation to an Arbitration Hearing (a full trial, taking several days), and were settled by a final order of the Commission.

ADS find the Conciliation process works extremely well for all of our clients, whether they are applicants or respondents.

Conciliations work well because;

- They are conducted over the phone, which is convenient for everyone, and
- The Conciliators are extremely balanced, helpful, and conscientious, and
- The Conciliation is a simple process, it doesn't need to be overcomplicated, and
- The discussion helps the parties tie up loose ends, such as unpaid entitlements, and
- The whole process is over in a matter of weeks, and this speed is essential for people to achieve closure, pick up and move on.

Often, applicants don't want monetary compensation but just want to collect any unpaid entitlements, or have their dismissal changed to a resignation. Changing a dismissal to a resignation allows a person to "clear their name" so they find it easier to get another job. It is difficult to present at a job interview with a dismissal on your record.

ADS conduct Arbitration Hearings only in extreme circumstances, because of the time and expenses involved, but find the arbitration process mostly satisfactory. Respondents exhibit great fear of the system, until they have been through it. We find generally, that once a respondent has been through the system they are quite satisfied with it.

The exception to this is, our experience shows, where people have previously used law firms as representatives or advisers, a great many tell us how unhappy they are with the system, and view it as ridiculous, unfair, scary and prohibitively expensive. Consequently, we take the view that the legal sector is generally not well placed to operate in the disciplinary advice and unfair dismissal space. Law firms seem incapable of solving problems quickly, simply, efficiently, and cost effectively, and in the unfair dismissal space, this is what is required.

**Key recommendations**

1. Currently, any employees who earn more than the upper earnings limit (currently \$133,000, but indexed once a year) and aren't covered by a Modern Award or an Enterprise Agreement cannot access the unfair dismissal claim. This means that these people tend to manufacture General Protections Claims or pursue breach of contract claims in higher courts. This leads to greatly increased costs for applicants and respondents, as well as extra time and stress. The upper earnings limits and the dismissal related General Protections divisions of the Fair Work Act should be abolished, so that both applicants and respondents use the low cost, quick and efficient unfair dismissal system to resolve their employment separation disputes.
2. Currently, people employed by a Western Australian trust are unable to make an unfair dismissal claim. This exemption seems an anomaly and should be removed.
3. When applicants don't seek advice and self-represent they tend to pursue spurious claims. The Fair Work Commission should implement measures to encourage applicants to seek advice from professionals (other than law firms), before lodging a claim. This would prevent many spurious claims from being lodged.

**Peter Anderson**

General Manager