



HON CRAIG EMERSON MP

MINISTER FOR SMALL BUSINESS, INDEPENDENT CONTRACTORS AND
THE SERVICE ECONOMY
MINISTER ASSISTING THE MINISTER FOR FINANCE ON
DEREGULATION

2UE Drive
With John Stanley
20 March 2009

Subject: WorkChoices, small business.

STANLEY: The Small Business Minister, Craig Emerson, joins us on the line now. Dr Emerson, good afternoon to you.

EMERSON: Good afternoon John.

STANLEY: Seems a very small difference, doesn't it?

EMERSON: Well not really because we took a policy to the election, which was very clear, and that was that a small business is defined as a business with 15 or less employees. This was a big issue as to whether almost four million working Australians would have protection from being dismissed unfairly or not. It was a huge issue in the election. We spelt the policy out very clearly and that's the policy that went into the Senate last night.

Malcolm Turnbull said late last year that Labor took a policy on unfair dismissal to the election and won and we need to respect that. He's broken his word because he has insisted on 20. In fact, their preference is for 25.

STANLEY: Their preference is 25, but at the moment, the law as it stands at the moment, WorkChoices means that you're exempt from the unfair dismissal laws if you have 100 or less employees. Is that right?

EMERSON: That's right.

STANLEY: So the Senate with the independents, the cross-benchers want to bring that down to 20. You want to bring it down to 15. It doesn't seem like a huge difference really?

EMERSON: Well when you go to an election and you say 15 we're actually keeping our election promises and I think that's what the Australian people want. Contrast that with WorkChoices not a whisper of which was made before the 2004 election. So we went to the public with 15. It happens to be aligned with the redundancy provisions, in the existing legislation, so it's consistent with the redundancy arrangements and we're insisting on being able to honour our commitment to the Australian people.

Joe Hockey this morning said it's a minor technical amendment. If it's a minor technical amendment why is he insisting on it and the answer is they want to keep WorkChoices. They don't want this legislation to pass. They were always going to find some reason, some pretext not to get rid of WorkChoices.

STANLEY: Let me put it to you because if you've got say a small business has got 15 people at the moment and I know we're in a climate where not many people are putting workers on but you would hope particularly with the cash injection that there may be some workers who've gone from some areas that may be picked up by others which are retail based. If they've got 15 staff they may be unwilling to add to that staff because they figure once we get to 16 we're caught by the unfair dismissal provisions?

EMERSON: Well you see the dividing line, John, between 15 and more than 15 is not whether there are unfair dismissal arrangements or not. It's the nature of those arrangements and you actually presented that accurately in your introduction. If you were a bigger business then the so-called probation period during which the unfair dismissal laws don't apply is six months. If you are a smaller business it's 12 months. And I would add that if we are talking about economic times and people saying well I'm not sure whether I should have someone on, they would have a full 12 months at less than 15, a full six months at more than 15 and very importantly a redundancy is not an unfair dismissal. If you have to put staff off because sales haven't been as good as you expected then that is a redundancy and the unfair dismissal laws do not apply.

STANLEY: So okay, and if you're over 15 you've got six months and I guess the next six months are going to be quite crucial. That person would know they've got six months but of course none of that applies at the moment because these laws still haven't been passed in the parliament?

EMERSON: That's right and we are working in good faith with the non-coalition members of the Senate to see if we can find a way through this. There's no point dealing with the coalition. Unfortunately, we are not able to trust Malcolm Turnbull's word, who said that only in December he respects the mandate of the Australian people and he said this month, within the space of two weeks, first he said WorkChoices is dead, two weeks later he said the man who said WorkChoices is dead is Brendan Nelson. So, I don't know where the guy is. He's either very very confused or he's very very deceptive. But either way it doesn't add up.

STANLEY: I've just got, I've got Ray on the line he's a small business owner. I'll just get Ray's view, rather than do it in a way that I mightn't have the answer. What did you want to ask Ray?

RAY: Hello John, how are you?

STANLEY: Good Ray.

RAY: John I'm just, apart from whatever else is being said, I'd like someone to define what unfairly dismissed is. Now I've been in business for 30 years and never been the slightest way inclined to dismiss anybody in what we would regard as unfair. We don't sack people for no reason or other. You might sack them for theft or inability or lack of effort or something but if you've got 5000 business people with a business the size that I have, maybe with a turnover of over \$8 or \$10 million a year or something, and now with only about 16 employees, ask every one of them have they ever unfairly dismissed anybody? I sacked a guy once who went away for 10 weeks. We agreed to give him holidays for 10 weeks. He came back after 12. When he walked in I said what did you do? He said I was enjoying my holiday so he caused a great deal of pressure so I dismissed him. It cost me \$32,000.

STANLEY: This was a situation where he used the unfair dismissal laws at the time?

RAY: Exactly.

STANLEY: And you had to pay him out.

RAY: John could I go to another point, I hope I don't bore anybody...

STANLEY: No go on Ray. I'll get a response from the Small Business Minister. Go on.

RAY: Because business is a bit tough at the moment we've just had reason to decrease our staff by two. Now in the old days we used to be able to go and say to somebody here's a week's notice, take a week and go and find yourself a job and we'll pay you a week in lieu of notice.

STANLEY: Right.

RAY: Because both of those people had been working with us in excess of three years and they both were over 40 years of age we had to give them four weeks notice. So some people and you know everybody's fairly vulnerable at the moment, some people that could destroy them, that's four weeks pay. Both of those people were on \$50,000 a year, right so I've paid out an extra \$9,000 that I really didn't want to pay. Otherwise if I could afford to pay them I wouldn't have dismissed them.

STANLEY: Okay, all right, you've made a couple of points. I'll get a response from the Minister if I can Ray. Good luck with your business. You've got 16 workers have you?

RAY: Yeah.

STANLEY: So you're sort of on the edge there. You're following all of this with great interest. How is your business going?

RAY: Pretty tough John.

STANLEY: Well I hope it gets better.

RAY: We'll still be here in a couple of years.

STANLEY: I hope so. Good on you. Sounds like it. Good on you thank you. I'll go back to the Minister Craig Emerson. Your response on what you've just heard?

EMERSON: Well I agree with Ray that most employers do not just go and dismiss their staff just for the heck of it and particularly small business employers. That is the case. However, there have been circumstances, and there are circumstances, where an employer might come into the workplace in a very bad mood and in a fit of being upset or cranky just dismisses someone on the spot for no obvious reason with no recourse. We do not think that that is right. We think that in those circumstances there should be some protection. However in the sorts of cases that Ray is talking about, such as theft, you can dismiss under our laws someone who has stolen from the till on the spot - on the spot. And so if they are guilty, if they've done something that involves serious misconduct, very bad behaviour towards other staff members or towards customers that's serious misconduct on the spot you can be dismissed. If someone, however, is underperforming we simply say that we believe that they should be told that they are underperforming, given an opportunity to improve their performance and if they don't then they can be dismissed. I think that is very very reasonable.

STANLEY: So what we might do, there's going to be a lot of debate over this couple of months. It might be a good idea one afternoon to get you on the line, we'll take some calls and get specific examples from some of our small business owners, and you can go through it because you know all about what is being proposed, so they know what's on the books.

EMERSON: And indeed in Ray's example of having to decrease his staff by two given that things aren't so good at the moment - again that is a redundancy not affected by the unfair dismissal laws.

STANLEY: Okay all right. He's talking about having to give them notice but we can go through all of that when you come in on another occasion.

EMERSON: Love to.

STANLEY: Thank you.

EMERSON: Ok thank you John.

Ends