



Friday 9th January 2009

LHMUQ Submission to the Senate Inquiry

The Liquor Hospitality and Miscellaneous Union, Queensland Branch welcomes the opportunity to make this brief submission to the Senate inquiry. The LHMU Queensland Branch supports the submissions made by the LHMU National Union and the Queensland Council of Unions.

Changes to unfair dismissal laws.

1. 100 employee exemption

LHMU Queensland Branch note that the new bill removes the 100 employee exemptions introduced under work choices and introduces new qualifying periods that have to be met before unfair dismissal applications can be made.

LHMUQ supports the improvement of removing the 100 employee exemption. Through our member assist centre in Queensland we have often had to advise members that they are unable to have their dismissal challenged due to the jurisdictional impediment of the 100 employees. We believe that the removal of the arbitrary 100 employee exemption will provide more fairness by abolishing the arbitrary exclusion.

2. Probationary periods

LHMUQ notes that the Bill provides for probation periods of 6 months for employees working in businesses with 15 or more employees and 12 months for employees working in businesses with less than 15 employees.

Employees who have not completed their probation period are excluded from a remedy for unfair dismissal.

It is our view that those probationary periods are too long. In the majority of cases the suitability of our members to perform their work is able to be assessed within a much shorter period. It would be rare that such lengthy periods as set out in the Bill would be required.

Unfairness arises because our members can be unfairly dismissed, for example for capricious, unreasonable or no grounds at all, because they are within a probationary period. This is distinct from circumstances where an employee might be considered to be unsuitable by the employer and terminated within a probationary period on those grounds.

Our member assist centre has previously had to advise members that they could not challenge their dismissal because they were under a probationary period. In a number of instances the dismissal appeared to be unfair and not related to an unsuccessful work trial.

3. Time Limits

LHMUQ notes that under the Bill the time limit to lodge an unfair dismissal claim is reduced from 21 days to 7 days. We understand the aim of the new time limit is to promote quick resolution of claims and increase the feasibility of reinstatement as an option. LHMUQ believe the changes are more likely to have an opposite effect.

Under the 21 day time limit LHMUQ member assist centre investigates members' dismissals and assesses and advises members as to the merits of their complaint, the union also holds discussion and communication with employers within the 21 days time frame to explore whether the dismissal can be resolved primarily by reinstatement.

At all times we are mindful of the 21 day time frame and ensure our members' rights are protected should they wish to make a formal application.

On a number of occasions our investigations show that the dismissal ought not to be challenged in the tribunal and advise our members accordingly. In some situations employers agree to reinstate a member or some other arrangement.

It is our opinion that employers will be less likely to continue negotiations with us if a formal application to a tribunal is made.

It is our expectation that with a compressed 7 day time frame we will be more likely to make application for each and every dismissal in advance of a thorough investigation or negotiations with the employer having been concluded. We would need to file application within 7 days to protect our members' interests without having to face an extension of time argument.

Please be advised that officers of our organisation will be available to attend the Senate Inquiry to provide a statement and supplementary information to these matters.