

Redfern Legal Centre



13 November 2013

Committee Secretary
Senate Education
Employment and Workplace Relations Committees
PO Box 6100
Parliament House
Canberra ACT 2600

By email: ewer.sen@aph.gov.au

Please find attached our policy submission in response to the Fair Work Amendment Bill 2012 (Cth).

We would welcome the opportunity to meet with you to further discuss our submission.

Yours faithfully,

Redfern Legal Centre

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Acting Chief Executive Officer

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General enquiries: Monday to Thursday 9am – 9pm, Friday 9am – 6pm

Interviews by appointment: Monday to Thursday 6.30pm – 8pm

Redfern Legal Centre



SUBMISSION IN RESPONSE TO
THE FAIR WORK AMENDMENT BILL 2012 (CTH)

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1. Introduction: Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent, non-profit, community-based legal organisation with a prominent profile in the Redfern area.

RLC has a particular focus on human rights and social justice. Our specialist areas of work are domestic violence, tenancy, credit and debt, employment, discrimination and complaints about police and other governmental agencies. By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct case work, deliver community legal education and write publications and submissions. RLC works towards reforming our legal system for the benefit of the community.

2. RLC's work in employment law

This submission is based on Redfern Legal Centre's experience in providing free legal services to applicants in the Fair Work system. This is provided in three ways:

- a. The provision of advice to clients by volunteer solicitors, supervised by solicitors employed by Redfern Legal Centre;
- b. Casework undertaken by solicitors employed by Redfern Legal Centre. Such casework is usually provided to particularly disadvantaged clients; and
- c. Representation at unfair dismissal conciliations under the Unfair Dismissal Representation Scheme, which is a partnership between Clayton Utz and Redfern Legal Centre. Under that scheme, solicitors are seconded by Clayton Utz to Redfern Legal Centre, and those seconded solicitors provide advice and representation to applicants in unfair dismissal matters, under the supervision of a solicitor employed by Redfern Legal Centre.

Redfern Legal Centre also advises and represents clients in discrimination complaints against employers and other respondents.

3. RLC's view in summary

RLC welcomes the opportunity to comment on those parts of the Amendment Bill relevant to the experiences of our clients. These are:

- a. Limitation periods for unfair dismissal cases;
- b. Limitation periods for general protections cases; and
- c. Costs orders against parties.

It is our position that:

- a. The time limit for unfair dismissal cases should be increased to at least 21 days but preferably to 60 days as general protections currently are.
- b. The time limit for general protections matters be kept at 60 days.
- c. In the alternate, if time limits for both unfair dismissal matters and general protections matters be set at 21 days, that there is some mechanism which allows applicants to change their application from one to the other after the conciliation.
- d. Section 400A regarding costs orders be rejected.

4. RLC's recommendations

- a. Time limits for unfair dismissal claims:

In the experience of Redfern Legal Centre the time limit of 14 days for unfair dismissal claims is very short and not enough time to make an appointment for a client and get detailed instructions before the point the application is made. In many cases the applicant must file an application before they receive any advice.

Due to the short timeframe, and the nature of the issues in dispute, it is often not until the point of conciliation that the applicant or their representative has all the relevant information from the respondent. This is especially so since the employer has access to much of the information that employees may not, such as employment records.

As such, it is often not until the point of conciliation that the representative is able to fully advise their client of the strength of their case and whether it fits better as an unfair dismissal claim or a claim under general protections. At this point the applicant should have the ability to start again under the other type of claim, or switch between the two.

Recommendation

The time limit for unfair dismissal matters should be extended to 60 days to match the current time limit of general protections matters.

In the alternate, if both time limits are set at 21 days, there should be a mechanism which allows applicants to switch from one type of application to the other after the conciliation, before the hearing.

- b. Time limits for general protections matters

For the reasons above we submit that 21 days for general protections matters would be too short to allow a fair process for applicants unless they have an opportunity to change from one type of application to the other after the conciliation.

Recommendation

The time limit for general protections matters should not be reduced from 60 days to 21 days.

In the alternate, if both time limits are set at 21 days, there should be a mechanism which allows applicants to switch from one type of application to the other after the conciliation, before the hearing.

c. Costs orders against parties

We support the submission by Employment Law Centre of WA (Inc) which recommends that this proposed section may act to coerce applicants to accept unreasonably low settlement offers to avoid costs orders, when often applicants are not interested in a money settlement but reinstatement or a statement of service or apology for their treatment.

In a jurisdiction which has many unrepresented applicants and a clear imbalance of power between parties the risk of costs would provide an added pressure on applicants to accept unreasonable offers. This goes against the purpose of low cost, efficient and just Tribunals.

Recommendation

That the proposed section 400A be rejected.