

5 November, 2005

**Submission to Senate Inquiry on the Workplace Relations Amendment (Work Choices) Bill 2005**

I make this submission as an Australian concerned about the fairness and usefulness of many of the measures in the proposed workplace relations legislation. Whilst I do not expect the legislation to have a significant personal impact, as a skilled worker in a large organization with no history of industrial conflict (there has not been an industrial dispute of any description in my 11 years there), I am disturbed by the potential impact on many other members of the community.

The views expressed in this submission are mine as an individual, and do not represent those of any organization with which I am affiliated.

My specific concerns are:

1. The lack of any effective remedy for unlawful dismissal. Whilst unlawful dismissal remains illegal under the proposed legislation, there will be no way for most affected workers to seek any redress under these provisions because of the requirement to sue in the civil courts (the proposed \$4,000 legal assistance will not go remotely close to covering the costs of this). If the Government is serious about retaining meaningful unlawful dismissal laws, it is essential that a lower-cost means of resolving claims be found. Under the present wording it is difficult not to conclude that the intention of the legislation is to effectively remove any protection for unfair dismissal by making it impossible for anyone without significant assets to take action against it.
2. The ability of existing law to fulfil the Government's stated objectives. The Government's objectives, as stated in much of their advertising, are to encourage the making of agreements which are mutually beneficial to employer and employee. The making of Australian Workplace Agreements which do not disadvantage the employee is an option already available under existing law. As such, one can only conclude that an aim of this legislation is to facilitate the making of agreements which do disadvantage the employee.
3. The likely effect of the laws in amplifying economic cycles. A likely outcome of increased deregulation of the labour market is that it will lead to amplification of economic cycles, as wages tend to increase more strongly than at present during periods of strong economic growth, and decrease during economic downturns. This is likely to lead to positive feedbacks at both ends of the economic cycle, particularly as the workers most severely affected will be the low-paid and changes in their disposable income are reflected rapidly in spending.

4. The effective loss of any redundancy provisions. The provision allowing for dismissals for 'operational reasons', even in workplaces with more than 100 employees, effectively removes any entitlement to redundancy payments of any kind. This is likely to result in considerable hardship to those individuals unfortunate enough to be made redundant, as they may face significant cashflow difficulties in the period between becoming unemployed and becoming eligible for welfare assistance.
  
5. The encouragement that the laws give to stalling tactics. The provision that baseline conditions revert to the minimum allowable conditions 90 days after the expiry of a certified agreement is an encouragement to employers to engage in stalling tactics, as they can effectively allow the conditions of a certified agreement to lapse by simply refusing to negotiate (or, alternatively, use the possibility that this might happen to coerce employees into entering either AWAs or a new certified agreement on unfavourable terms as the 90-day period comes to an end). The system should be discouraging a refusal to negotiate, not providing an incentive to do so.
  
6. Uncertainty arising from the wide Ministerial powers. The legislation gives the Minister great discretionary powers. Whilst we can be confident that they will be used in a particular way under the present Government, parties entering into agreements under the new legislation will need to factor into their decision-making the possibility that a future Minister might use those powers in a significantly different way, introducing additional risk into business decision-making.

Yours sincerely,

Blair Trewin