

# Submission

to

Senate Employment, Workplace Relations and Education  
Legislation Committee

## **Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005**

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# **SENATE ENQUIRY INTO THE WORKPLACE RELATIONS AMENDMENT (WORKCHOICES) BILL 2005**

## **SUBMISSION BY JOB FUTURES**

### **Summary and Recommendations**

Job Futures view is that demographic change will require more flexible workplaces and labour markets, that we do need a more flexible industrial relations system and that there is some merit in what the government proposes. The changes may well provide opportunity for employment for some, but they will not provide protection for thousands of others. For some they may be fairer and simpler. For others they will not be. The challenge is to ensure that the changes have sufficient individual safeguards built in while delivering both good economic and social outcomes in the longer term. This will require the incorporation of a number of refinements into the proposed reforms.

#### **Job Futures recommends that:**

1. Sufficient time be allowed for debate on the legislation to ensure the changes do not cause harm to disadvantaged people that could have been prevented.
2. The legislation contain sufficient safeguards to ensure that people are not forced to work hours or days that are unreasonable in light of their circumstances.
3. A transparent formula be put in place to ensure that if benefits are traded for cash, such trades are of equal value.
4. Job seekers not be required to accept remuneration and conditions that are less than those provided for in any relevant award.
5. JNMs have the discretion not to submit a Participation Report where both the job seeker and the JNM believe that job does not constitute suitable employment because the conditions required by the employer are incompatible with the circumstances of the job seeker and are such that, had they been known, the JNM would not have referred the job seeker to that job and it is considered highly unlikely that the job seeker would remain in the placement if it were accepted.
6. Where a Participation Report is submitted, benefits are not removed or suspended unless a Centrelink Officer, with the discretion to make such a decision, has interviewed the job seeker and determined whether or not the employment offered was considered to be suitable.
7. A system be established to ensure that if minimum wage set by the Fair Pay Commission fall below the level required for an individual to properly provide for their dependents, the welfare support system will step in to fill the gap.
8. The current moves to more closely link workplace relations with welfare and work be continued and that the issues of education and skills be more closely integrated with these components.

## **Body of Submission**

### **Job Futures**

Job Futures is Australia's only national network of not-for-profit community-based employment and training providers, with a particular focus on assisting those most disadvantaged in the community. It is one of the largest providers of the Australian Government's principal workforce participation program – Job Network – and currently delivers one third of the specialist contracts and 80% of the indigenous contracts under this program. In 2004/05 Job Futures, through its member organizations, assisted disadvantaged people through providing services at over 160 locations nationwide, from inner city Sydney and Melbourne to remote communities such as Mutitjulu in the Northern Territory and Halls Creek in Western Australia.

### **Overview of Submission**

Job Futures' view is that for the majority of employers and employees the proposed changes to the industrial relations legislation will not have significant impact. However for some, the changes are likely to deliver benefits while others will be worse off. We believe that while some of the package is good, some needs considerable improvement to protect the most disadvantaged in our community.

We also submit that there is no compelling urgency to implement all of the changes immediately. The legislation is lengthy, complex and detailed and it is essential that sufficient time be allowed to ensure the changes do not cause harm to disadvantaged people that could have been prevented.

### **Are the changes necessary?**

Job Futures believes that the debate about the changes has degenerated into claim and counter claim with both sides locked in rigid, opposing positions. The Government and business groups claim that our economic prosperity is at risk if we don't undertake the full scope of the reforms immediately while almost everybody else claims that our social fabric will be damaged, family life destroyed and individuals turned into robots if we do it at all. It is of concern that a mindset of "all or nothing NOW" seems to underpin the debate.

Much of the rationale for the changes is driven by demographic analysis which is relied on almost unquestioningly. It is conceivable that this analysis may not be accurate. While the direction and shape of the predicted changes may be correct, we may be wrong about the timing and magnitude. To see that this might be the case it is worth remembering Barry Jones famously saying that we would all have to be retrained to use all the leisure time we would have by the 21<sup>st</sup> century. Thirty years ago we did not doubt that there would not be enough work for everyone by 2000 – we even lowered the retirement age to 55 on the strength of it. It was wrong.

This is not to say there is a case for doing nothing. However, we should be careful about what action we take, do it in a timely manner when it is required, and make sure the changes do not cause harm that could be prevented. The length, complexity and

detail of the proposed legislation and accompanying explanatory notes make it even more critical that sufficient time is allowed for the impacts to be properly analysed and appropriate changes made.

Job Futures **recommends** that sufficient time be allowed for debate on the legislation to ensure the changes do not cause harm to disadvantaged people that could have been prevented.

Also, while overseas comparisons may be useful pointers in social policy analysis, it needs to be remembered that conditions and issues vary and just because something has happened elsewhere does not necessarily mean it will happen here. For instance, the outcomes of industrial relations changes in Australia are likely to be very different from the USA, with its supply of cheap labour and cheap imports from Mexico, coupled with a welfare system which is inferior to our own.

### **Need for more flexible workplaces and more flexibility in the labour market**

Despite the uncertainties about future predictions or likely impact, Job Futures is of the view that we do need more flexible workplaces and a more flexible labour market system. This is not just to meet the predicted future demographic changes but also to meet the needs of current job seekers, the people who members of the Job Futures network are working with every day.

The demand for labour is predicted to outstrip supply by 2010 (only 4 years away) meaning that there will simply not be enough workers to fill all the jobs which are available. Skills shortages which are already apparent in many areas, such as health workers and trades, will worsen. It is already common to hear employers complain that it's hard to get employees with the skills you want, and it is set to get worse.

There is already an imbalance between those who are over-employed and those who are under- or un-employed. The recently-released HILDA research supports this and there is also no likely rise in the pool of unemployed.

### **Where will the workers we need come from?**

Research undertaken for Job Futures by MacroPlan Australia concludes that in the medium term a stage will be reached where there are not enough people in Australia willing or able to do the jobs that need doing, from agricultural work to personal care. At that time, there will be an unavoidable need for Australia to compete internationally for guest workers, regardless of the current political position on this issue.

Until that point is reached, there are four main sources from which our workforce needs can be met.

The first source is the pool of under-employed. There are a large number of workers in Australia who want more hours than they have and we often overlook this pool of labour in our statistics. It is masked by the fact that in Australia, being unemployed is defined as not having worked at least one hour in the previous week. It is our view that most people, including the disadvantaged job seekers with whom we work, do not

think having a job for one hour in a week counts as being “employed” in any commonly understood sense of the word. The general view of “unemployment” might be more in line with that used in Germany, where you are counted as unemployed if you work less than 15 hours in a week and would like to work more.

If we used this definition of unemployment in Australia our unemployment rate would be over 10%. But it also might lead the Government to encourage and support agencies such as Job Futures to work with this group in addressing the impending skills and labour shortages. A reassessment of how “unemployment” is defined might give a more realistic picture of the availability of labour and lead to desirable changes in Job Network to focus more on this group.

The second source of labour will be through increasing participation rates, which are lower in Australia than in comparable OECD countries. However this is not as simple as it sounds. The research recently carried out for Job Futures by MacroPlan makes it clear that the only group where there is a predicted increase in the participation rate is for women over 45 years.

The third source of labour is the retired baby boomers. There seems to be an assumption that the baby boomers will retire early and stay retired. However considering that 45% of people do not have any superannuation and of those that do, about one third do not have sufficient, it is inevitable that many retired baby boomers will have to work part time in order to live at a reasonable level of comfort in retirement.

And finally there is the pool of sole parents and those on the Disability Support Pension who have the ability to do at least some work, a group which the welfare to work reforms is already beginning to address.

These four groups comprise people who may or may not be participating in the labour market already but who do not see themselves as “unemployed”. However as the supply inherent in these groups is exhausted, the remaining source of labour within Australia will be unemployed people with increasingly high levels of disadvantage.

### **Who would benefit from more flexible workplaces and labour markets?**

The groups from which the future labour pool will be drawn have one thing in common: they are likely to either want or need flexible and often unorthodox work patterns and would be likely to benefit from a more flexible work places and labour markets. They will want hours that suit their needs within a relatively stable framework of an ongoing employment relationship, even during periods they are not working. Some examples of these types of groups are:

- Underemployed workers wanting additional, but regular, hours in another job.
- Sole parents who can only work during school terms and school hours but need the certainty of continued employment rather than on a term by term basis.

- Retired baby boomers, women over 45, other older workers and those seeking social connection wanting to work only a few hours a day, or a few days a week. They may not be interested in annual leave and would rather have the cash in their pockets.
- Partners of fly-in fly-out workers (research commissioned by us shows this group is growing in number) available to work two weeks in three or similar “chunked” patterns.
- Seasonal workers seeking the certainty of a continuing relationship with an employer, despite only working when the work is available.
- People with physical or mental disabilities or other barriers to employment requiring flexible hours and specially adapted work places or additional support and a gradual increase in hours and responsibility during transition to work.
- People in education or training needing to alter the hours they work each semester and take time off for study and exams.
- Older workers retraining in trades needing reasonable wage levels and quicker progression that recognise and reward their experience, rather than the low wages and four year courses which apply to young apprentices. It would be appropriate to reinstate the old classification of “journeyman” for this group.

Job Futures believes that we need an industrial relations system that creates more flexible workplaces and allows for these types of employment patterns in the future if we are not to simply run out of people to do the jobs in our society that need to be done. We need a system which is nimble and adaptive and allows people to match their life circumstances to their employment in the way which maximises both.

The problem will be attracting these people into employment, especially those who do not see themselves as “unemployed” and who would like to participate. However they will simply not bother unless it is on the terms they want. It is therefore essential that the industrial relations changes encourage, rather than discourage, such potential workers into the workforce.

In the past our awards-based industrial relations system has often not been very good at this. The industrial relations changes are likely to allow this to happen and Job Futures supports this direction. However before they are implemented there is much that needs to be done to support those who could be disadvantaged by the changes as currently proposed.

### **Opportunities Presented by the Reforms**

There has been much attention paid in the debate to the most disadvantaged workers and a common belief has emerged that they will all be worse off under the proposed reforms. However Job Futures believes that the industrial reforms will present some opportunities.

Networks such as ours may be able to get people into jobs where previously we could not, by working more closely with employers to create flexible conditions to respond to the increasingly diverse needs of job seekers. For example, one of our member organisations has worked with an employer to enable sole parents to work the 10 week school terms and not work during school holidays. The reforms, with their

averaging provisions for the 38 hour week, may enable such arrangements to be created in abattoirs, fishing, agricultural and other seasonal industries where only short term employment opportunities currently exist.

There appears to be a common view that it is not possible for all highly disadvantaged job seekers to have any bargaining power. However Job Futures believes that even when working with highly disadvantaged clients, opportunities can be found to give such job seekers the skills they need to ensure that they do have bargaining power in the system.

We have recently been trialling an Intensive Case Management system, working with just these types of clients – those who have been unemployed for many years, who have physical and mental disabilities and who every other agency had given up on. We have had extraordinary successes with this approach and our experience confirms that one of the keys to achieving such success is flexible workplaces.

*Stephen's Story* (see attachment) demonstrates that is possible for even the most disadvantaged job seekers to acquire skills and gain employment in areas of skill shortage and therefore be less vulnerable to the impact of the reforms.

However despite the opportunities that exist, we believe that the reforms will impact most on those who are most personally powerless, who have no experience of negotiation, and those who have the lowest range of bargaining chips, that is those with few skills and with disabilities.

### **Changes required to protect disadvantaged people from harm**

Job Futures believes there is considerably more work to be done before the industrial relations changes as currently proposed can deliver the benefits that may flow to some individuals without causing unacceptable levels of harm to many others.

The first and most immediate need is to ensure that the legislation contains individual safety net provisions. While those with good skills and in a good bargaining position may be able to safeguard themselves, others, such as many of the people we work with, do not have such skills. This is not a case of being disrespectful to them by saying this, as has been claimed by some supporters of the legislation. It is a simple fact that a person who has been out of the workforce for a long time and has high levels of disadvantage (including homelessness, substance abuse, and mental illness) does not have the skills or confidence to bargain with a prospective employer.

Job Futures **recommends** that the legislation should contain sufficient safeguards to ensure that people are not forced to work hours or days that are unreasonable in light of their circumstances. We further **recommend** that if benefits are traded for cash there is some transparent formula in place which ensures that trades are of equal value.

It is also not acceptable for those on benefits to have those benefits suspended by Centrelink if they refuse a job offer because of the inappropriateness of conditions imposed. Any job is *not* automatically better than being on welfare if the conditions cause hardship and dysfunction for the job seeker and/or their family. Job Futures is

**opposed** to any blanket requirement that would require us to breach job seekers for refusing a job that we believe is unsustainable and not in the job seeker's best interests.

Job Futures does not advocate that all job seekers should have the right to refuse employment without penalty, but we do believe that the blanket application of such a policy would have unanticipated and undesirable consequences both for job seekers and Job Network Members.

Minister Kevin Andrews has indicated that job seekers would lose their benefits if they refused to accept employment on conditions which are less than the award. Such a position would appear to conflict with s 601 (2A) (e) and (f) of the Social Security Act. This says that work is unsuitable for a person if *inter alia* the remuneration and conditions offered are less than those provided by the award, or, where there is no award, the remuneration is lower than the minimum rate for comparable work that is covered by an award.

Job Futures **recommends** that this legislative protection remains in place and job seekers not be required to accept remuneration and conditions that are less than those provided for in any relevant award.

Even if this point of detail is resolved, our concern remains that a position offered by an employer may comply with the requirements of the new system but may not be suitable employment for a particular job seeker. Job Futures believes that circumstances may arise where a job seeker should be able to refuse employment without penalty.

For example, a Job Network Member (JNM) may refer a job seeker who is a sole parent to an employer for what appears to be a suitable vacancy. On being offered the position, the job seeker is told that she will have to work public holidays and some weekends. The job seeker does not have any way of ensuring her children are cared for during these times. If the JNM had known these conditions would apply they would not have referred the job seeker to the vacancy as it would not have been considered suitable employment taking into account DEWR Guidelines which require JNMs to "carefully consider" the family and caring responsibilities of the job seeker.

In such a situation, it would appear that the policy position under the industrial relations changes is that the job seeker would have to accept the employment or lose their benefits.

It is Job Futures view that enforcing such a policy in such circumstances may lead to the following undesirable and unanticipated outcomes.

Firstly, JNMs will be reluctant to refer job seekers with special requirements relating to hours and conditions to an employer unless they are sure that unacceptable conditions will not be imposed. This means that they will only refer highly disadvantaged job seekers into positions where certainty of appropriate conditions is assured. This runs counter to the policy goal (which we support) of providing greater employment opportunities through more flexible workplaces as well as being likely to reduce placements in some instances.



Secondly, it will cause serious ethical concerns for employment consultants to have to submit a Participation Report where a person is offered employment that is not considered “suitable” either by the job seeker or the consultant because the employer requires conditions which would not be sustainable for the job seeker. To avoid this, the consultant would be likely to advise the job seeker to stick the job out for a few weeks and then resign. This will result in placements that are unsustainable from the beginning, consequent failure to convert to outcomes, and an experience of failure for both the job seeker and the consultant.

Thirdly, we believe that such a policy position undermines the Government’s policy agenda of achieving long term-employment for job seekers. In line with this policy, Job Futures has consistently been requiring our members to ensure they do not place job seekers in “any job” for the sake of making a placement. We encourage and support them to place job seekers in “the right job in a sustainable community”, even at the risk of taking a little longer to obtain suitable employment. This has resulted in our members achieving higher levels of conversion to 13 and 26 week outcomes for highly disadvantaged job seekers than had previously been the case.

In particular, the trials of our new Intensive Case Management System with highly disadvantaged job seekers (long term unemployed with a disability) has achieved some spectacular results. The blanket imposition of a policy position such as this would be likely to jeopardise our ability to achieve outcomes with some of these job seekers.

Finally, while most employers may be honest and behave ethically, we are concerned about those who will be unscrupulous in requiring draconian conditions because they know the job seeker must accept, or risk losing their benefits. A blanket policy gives such employers a licence to behave in a way that both harms the job seeker and damages the system as a whole.

While in general we agree that a job is better than welfare, this may not be so in every case and we believe that policies must ensure that consequences which are adverse for the individual and perverse in terms of achieving desired outcomes do not arise.

Job Futures **recommends** that provisions be put in place, similar to those in place for breaches for non-compliance before benefits can be suspended or removed. In particular, we **recommend** that JNMs have the discretion not to submit a Participation Report where both the job seeker and the JNM believe that job does not constitute suitable employment because the conditions required by the employer are incompatible with the circumstances of the job seeker and are such that, had they been known, the JNM would not have referred the job seeker to that job and it is considered highly unlikely that the job seeker would remain in the placement if it were accepted.

Where a Participation Report is submitted, Job Futures **recommends** that benefits should not be removed or suspended unless a Centrelink Officer with the discretion to make such a decision has interviewed the job seeker and determined whether or not the employment offered was considered to be suitable.

## **Policy and System Issues**

The proposed industrial relations changes also give rise to some policy and systems issues that need to be addressed.

### Separating welfare and wages

The industrial reforms create the Fair Pay Commission with its remit to set minimum wages and minimum award rates “with the primary objective of promoting the economic prosperity of the people of Australia”. This effectively removes the baseline for the minimum wage established almost a century ago in the Harvester Case.

This is a fundamental shift in philosophy, separating welfare payments from wages. Job Futures **recommends** a system must be established to ensure that if minimum wages fall below the level required for an individual to properly provide for their dependents, the welfare support system will step in to fill the gap.

### Closer system links

If the system is to deliver benefits for individuals as well as the economy generally, it will be necessary for the welfare, employment, education and skills systems to link more tightly. At present, for example, the Job Network system seems to be running a little behind the intentions of the welfare to work reforms and the industrial relations reforms. For example, it does not recognise continuing relationships of seasonal workers with employers as real and ongoing employment, so that a Job Network member is not rewarded for placing a person in a job which delivers employment in 6 or 8 week tranches, spread across the year with gaps in between.

Similarly, there does not seem to be enough recognition that education and skills are not solely things that happen at school or shortly thereafter. Flexible workplaces, coupled with flexible education and welfare support systems, are going to be necessary if we are to address the looming skill shortages.

Government departments are not good at getting out of their silos. Job Futures **recommends** that the process already begun, to more closely link workplace relations with welfare and work be continued and that the issues of education and skills be more closely integrated with these components.

## ATTACHMENT TO JOB FUTURES SUBMISSION

*This Case Study is extracted from the JOB Futures Annual Report 2005 and may not be used without permission of Job Futures.*

### **CASE STUDY: STEPHEN**

For most of us, our dream job might seem out of reach. Now imagine you suffer from serious back, neck and knee injuries, have history of depression and you have been on the DSP for 12 years. How much harder would it be to find successful employment, doing the job of your dreams? Yet for Stephen, a 40 year old man from Capalaba in Queensland, this very questions began a process that would change his life.

Stephen says, "After 300, 400 knock backs, I began to think I wasn't going to find employment...I didn't want to be a 40 year old pensioner, especially in front of my child's eyes."

When Marian, the Job Futures/Horizon Intensive Case Manager asked Stephen what his dream job would be he didn't hesitate. He would be a motorbike mechanic, but felt this an impossible goal due to his age, injuries and perceived limited opportunities in the field. Stephen's neck injury and chronic pain prevented him from working more than 15 hours per week and restricted the type of work he could do. These employment barriers were compounded by a history of depression and low literacy and numerical skills.

After addressing issues of motivation, self-esteem and confidence with Marian, Stephen made a list of all the motorbike shops in the area. He compiled a suitable resume that suited this type of employment and distributed his resume to potential employers. Then Stephen and Marian went out together and introduced themselves to prospective employers, canvassing work opportunities for Stephen.

Within weeks Stephen received a positive response from a local employer. After successfully negotiating a wage incentive, he started work on a trial basis. During her regular workplace visits, Marian discussed the need for a set of tools and special benches for Stephen that meant he did not have to crouch near the bikes when repairing them. The Job Seeker Account was used to cover the cost of these items.

Today Stephen is a different man. He is working full time as an indentured motorcycle mechanic and, because of prior learning, has been able to reduce his 4 year apprenticeship down to one and a half years.

He says, "My whole life has changed since I started work...My self esteem has jumped a million percent."

While Stephen clearly had the capability to work in his chosen field, he needed his Case Manager's innovative approach to help him see that.

He says, "Marian knew I could achieve what I wanted...but that I needed to know what I wanted to do first."