



Australian Federation of Disability Organisations

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Senator Troeth  
Chair, Senate Employment, Workplace Relations  
and Education Committee  
via email to: [eet.sen@aph.gov.au](mailto:eet.sen@aph.gov.au)

Dear Senator Troeth

**Re: Inquiry into the Workplace Relations Amendment (Work Choices)  
Bill 2005**

The Australian Federation of Disability Organisations (AFDO) is the peak body of organisations of people with disability in Australia. Our mission is to champion the rights of people with disability.

We thank the Committee for this opportunity to make a submission to the Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005. Unfortunately, the short time frame between the Bill's introduction and the close of submissions for this Inquiry, the length of the Bill and its publication in formats that were not easily read by people with disability, has meant that our submission is necessarily brief.

AFDO has four concerns about the Bill, which are:

- the potential for a reduction in earnings for people with disability;
- the adequacy of protections for people with disability with regard to negotiations and employment tenure;
- the impact of the reduction in minimum working conditions; and,
- the interaction of the Bill's provisions with the income support system.

These are addressed in more detail in the attached document.

We would welcome the opportunity to discuss our submission with the Committee. To arrange this, please contact Collette O'Neill on 03 9662 3324.

Yours sincerely

Maryanne Diamond  
**Chief Executive Officer**

## **1.0 Reduced Income for People with Disability**

We are concerned that the Bill, if introduced, may lead to a decline in the wages and income of people with disability in the workforce.

Section 7J (110) of the Bill details the wage-setting parameters of the Australian Fair Pay Commission and lists the factors to which the Commission is to have regard when setting wages. The last of these is: “providing minimum wages for .... employees with disabilities that ensure those employees are competitive in the labour market.”

Section 90P of the Bill states that a FMW applies to all employees other than employees with disability. ‘Employees with disabilities’ is defined in the Bill as a person who is eligible for the Disability Support Pension.

AFDO understands that the intention of this section is to introduce to the new system a process for setting productivity-based wages. However, these sections of the Bill read as if all employees with disability will be subject to an alternative wages setting mechanism.

AFDO strongly opposes this. While it is the case that for some people with disability, having access to a productivity-based wages system is beneficial, this should not be extended to all employees with disability.

AFDO rejects the argument that the labour costs of people with disability are a barrier to their employment. While there can be some up-front costs to an employer for retaining or hiring a person with disability, this occurs in relatively few cases and generally involves only minor expenses (which can be offset through programs such as the Workplace Modifications Program). Indeed, there is evidence that the employment of people with disability can improve the productivity of a workplace (Productivity Commission 2004: A.20)

The real barrier to the employment of people with disability is discrimination. Literature has identified that negative stereotyping by employers of people with disability is a substantial barrier to employment (Graffam et al 2004: 7). A survey of community attitudes towards disability undertaken in the ACT in 2004 found that 20% of people believed that people with disability “cannot be as effective at work as people without disabilities” (ACT Disability Advisory Council 2004: 4). Martz found that people with “invisible” impairments were 16 times more likely to find employment than people with visible impairments (cited in Graffam 2004: 7).

People with disability already earn less than their non-disabled counterparts due in part to stereotyping and discrimination (Productivity Commission 2004: A.10). There is no reason to believe that discriminatory attitudes will not colour the judgement of people who are charged with negotiating the wages of employees with disability and lead to people with disability being offered lower wages for doing the same work as others. This could occur in two ways:

- through reduced wages being included in AWAs; and,
- through the wages of people with disability being reduced via the inappropriate use of special Australian Pay and Classification Scales (APCSs).

Experience shows that reducing the wages of people with disability will not promote their employment - it will simply entrench ignorance, discrimination and poverty

#### *Casestudy 1*

Frank has a physical disability and uses a wheelchair. With the right workplace accommodations, such as a desk at the right height for his wheelchair, Frank is able to work at the same rate of productivity as his colleagues.

#### *Casestudy 2*

Brenda has acquired a condition that results in fatigue. To accommodate this, Brenda has reduced her work hours. The extra time to rest enables Brenda to maintain her productivity at the same rate she worked prior to acquiring her impairment.

### **Recommendation 1**

That legislative protections are introduced to ensure that people with disability (as defined in Section 4(1) of the *Disability Discrimination Act* [DDA]) do not face direct and indirect discrimination in terms of the rates of pay they are offered and receive. This includes protections for people with disability who are offered AWAs.

### **Recommendation 2**

That the use of productivity based wages and special APCSs be highly restricted and only applied in individual cases of workers with genuinely restricted productivity.

## **2.0 Adequacy of Protections**

People with disability are a highly vulnerable group in the labour market. People with disability are more than twice as likely as others to report being harassed, bullied or subject to discrimination at work (Productivity Commission cited in Graffam et al 2004: 4). Employees with disability are also over-represented in retrenchments (Boling 2002).

Protections are needed to prevent the proposed changes to the industrial relations legislation leading to a substantial decline in the employment conditions of people with disability and the numbers of people with disability who are employed.

International research shows that anti-discrimination legislation will not be sufficient to provide this protection (Graffam et al 2004: 4). People with disability (as defined by the DDA) require additional assistance at the stage of negotiating agreements and taking part in bargaining. People should be able to access assistance from a wide range of sources. For example, a disability advocate may be better placed to assist a person with disability than an employment advocate. People must also have access to information in accessible formats where required.

We would not support to protections being offered only to people with disability who are eligible for the Disability Support Pension.

AFDO is concerned about a range of dismissal related changes contained in the Bill that are likely to disproportionately disadvantage people with disability, such as:

- the abolition of unfair dismissal protection for people working in workplaces with less than 100 staff;
- the change to workplace agreements such that they do not have to contain minimum award redundancy standards; and,
- workers who are dismissed on the basis of 'operational requirements' of a business not being able to claim unfair dismissal, no matter what size their workplace.

AFDO is further concerned that employers' ability to use "operational requirements" as a cover-all for dismissal may lead to a sharp increase in the dismissal of people with disability, particularly those who acquire their impairment while in the workforce.

### *Casestudy 3*

Maria is blind and has been working as an information officer for a local council for several years. The council recently upgraded their computer software to a system that is not compatible with Maria's synthetic speech adaptive software. Maria complained and asked that this be rectified. Soon after, the council declared that Maria's position was no longer required and she was made redundant.

### *Casestudy 4*

Alan has an intellectual disability and needs information to be provided to him in plain English. During negotiations for a job, Alan is offered a complex employment contract and told that he should sign it if he wants the job. Alan cannot understand the contract as written and does not feel confident asking for either an accessible copy or for additional time to consider it.

### **Recommendation 3**

That people with disability have the right to choose their advocate and to be provided with information in a format they can read and understand.

### **Recommendation 4**

That additional protections be introduced for people with disability against redundancy and sacking.

## **3.0 Reduction in minimum working conditions**

The Bill proposes to reduce the minimum working conditions to 5 matters:

- a minimum hourly rate;
- 10 days sick leave;
- 4 weeks annual leave (2 of which can be bought out);
- unpaid parental leave; and,
- a maximum number of weekly working hours.

This reduction leaves out many conditions that are important to people with disability obtaining and retaining employment, especially:

- limits on when a person can be required to work

While there will be a limit to the number of hours a person can be asked to work, there will be no rostering limits on when the person can be asked to work the hours. This is problematic for many people with disability including those who are reliant on formal and informal personal assistance to get

prepared for work and those who are reliant on public transport to get to and from work.

and

- penalty rates and overtime

For the reasons outlined above, engaging in work outside non-standard hours can lead to a substantial increase in the costs incurred by people with disability working.

#### *Casestudy 5*

Thea relies on a personal carer to get ready for work every morning. Her personal carer is not available before 7am, meaning that Thea cannot start work before 9:30am. In special circumstances, Thea can arrange an alternative personal carer to arrive earlier, but she must pay higher rates to the agency.

#### *Casestudy 6*

Luciano has a psychiatric condition that requires fortnightly injections. The days prior to and after the injection are difficult for Luciano, so he has negotiated with his employer to have these days off work. Recently, his employer has demanded that Luciano only take one day off per fortnight. Luciano is physically unable to comply with this demand.

#### **Recommendation 5**

That the minimum working conditions be expanded to include at least rostering limits and penalty rates.

### **4.0 Interaction with the Income Support System**

The expected negative impact of the Bill will be worse because of its interaction with the Government's Welfare to Work package.

An example is the effect on people who are in receipt of Newstart. Currently, a person in receipt of Newstart may refuse a job offer if it offers below Award conditions. However, it is not considered reasonable for a person to refuse a job because they do not want to sign an AWA.

AFDO is highly concerned about what will happen to people with disability who are on Newstart, are offered employment, but are offered an AWA that offers below-standard pay and conditions.

We can foresee a situation where a person with disability is forced to choose between accepting a job at a rate of pay so low that the person *loses* money by working, especially once their disability related expenses are taken into account, or refusing the job, and having their income support payment cut for a period of eight weeks.

#### *Casestudy 7*

Justine has multiple sclerosis and is on Newstart. She is offered a part time job but only if she signs an AWA that includes below minimum wages. If Justine takes the position, she will need to take taxis to and from work, and will also face higher medical costs due to increased stress on her body. Justine has calculated that if she takes the job she will not earn enough to cover her extra costs and she will go into debt. However, it is not clear what will happen to her if she refuses the position and she risks losing her income support for eight weeks.

#### **Recommendation 6**

That the interaction between the industrial relations and income support systems be carefully managed to ensure that people with disability are not worse off.

## References

ACT Disability Advisory Council (2004), **Snapshot of community attitudes on disability in the ACT**, ACT Disability Advisory Council, Canberra.

Boling, P. (2002), **Overview of Public Sector Experience in Implementing the CDS**, oral presentation to the Forum on the Commonwealth Disability Strategy on 12 September 2002.

Graffam, J., Smith, K., and Lesley Hardcastle (2004) **Achieving Substantive Equality and Optimal Participation: Employees with a Disability in the Victorian Public Sector** (draft report), Deakin University, Melbourne.

Productivity Commission (2004), **Review of the *Disability Discrimination Act 1992***, Report No 30, Melbourne.