

Submission

to

Senate Employment, Workplace Relations and Education
Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

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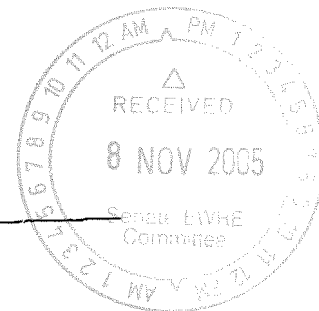
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Our ref: MM/
Your ref:

November 8, 2005

The Secretary
Senate Employment, Workplace Relations and Education Committee
Department of the Senate
Parliament House
CANBERRA ACT 2600

Facsimile: 6277 5706 Pages (including this page): 3

Dear Sir or Madam,

**RE: INQUIRY INTO THE WORKPLACE RELATIONS AMENDMENT
(WORKCHOICES) BILL 2005 ("WORKCHOICES")**

Blue Mountains Community Legal Centre ("BMCLC") is a small, non-government generalist Community Legal Centre based in Katoomba in the Blue Mountains, and provides free legal advice across a range of problem types (including employment matters) to disadvantaged members of our community. Our service encompasses the numerous towns and villages in the Blue Mountains local government area, the greater Lithgow area, Oberon, and Bathurst and environs.

Our clients live in larger regional towns such as Katoomba, Lithgow and Bathurst, and in smaller towns, villages, hamlets, and farming communities. The combined population of this area is well over 150,000 people. There are no Legal Aid offices in our region, the nearest office to Katoomba being 50kms east in Penrith. Going west, the nearest Legal Aid offices are located in Orange and Dubbo, with another Community Legal Centre based in Dubbo.

Our staff is entirely part-time, and we are unable to address all of the troubling issues surrounding Workchoices in the short period of time allocated for the lodgement of submissions. Nevertheless, we have identified two areas that we would particularly like the Committee to consider.

Inequality of Bargaining Power

We consider this issue to be one of the single most undesirable effects of Workchoices. Particular risks attach to the following groups:

- young people;
- people coming off benefits (these individuals risk a four month suspension of benefits should they fail to accept employment on the terms offered)
- people with disabilities;
- unskilled workers.

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These groups are not only vulnerable at the negotiation stage of an employment agreement, but our experience tells us that they will be less likely to have the support, ability or willingness to prosecute complaints about post-contractual unacceptable conduct or breaches.

The Federal Government is introducing Workchoices during a period of low unemployment. However, it is inevitable that in times of reduced demand for staff there will be increased pressure on all workers (but particularly those lacking the leverage of marketable skills) to simply accept any terms of employment that are on offer.

In addition, there will no doubt be substantial administrative and commercial pressures on businesses to require standardised agreements for all employees. Specifically, employers will need to keep careful track of the terms of employment of all of their employees to avoid inadvertently breaching applicable AWAs, so it is highly likely that large numbers of employers will want standard agreements that apply to as many staff as possible. Indeed, of the AWA's that we have been asked to advise clients on in the past few months, all have been standardised across the same workplace.

We consider this carries serious unacceptable risks that real working conditions will deteriorate over time, particularly for currently disadvantaged members of the community.

Limited Coverage of Employers

Due to its reliance on the Corporations Power, Workchoices will not cover most Private Sector businesses that are not incorporated under Commonwealth legislation. According to ABS publication 8161.0.55.001 *Counts of Businesses – Summary Tables*, as at June 2004 there were 3,015,182 businesses operating in the Australian Private Sector. Of these, 836,948 were categorised as 'employing businesses'. Of these, only 423,119, or 50.55%, were incorporated under Federal laws, with the balance being conducted by trusts (19.17%), sole proprietors (13.17%), family partnerships (11.95%), or organizations incorporated under State laws.

Accordingly, it seems fair to make the statement that across all States but Victoria, Workchoices will only apply to about half of all Private Sector employing businesses.

This statistic underlines the fact that, far from simplifying Industrial Relations issues for both employers and employees, Workchoices will make matters more complex and more disruptive. Coverage by the new system will depend upon the incorporation status of employers, and about half of all employers will still be governed by the State systems. Further, if an employer covered by Workchoices changes their status (eg by being deregistered or by nominating a trust to take over their employment activities), presumably there will be repercussions for any relevant AWA.

It is our submission that the most appropriate way to achieve a single national Industrial Relations scheme (if that is Parliament's intention) is for the Federal Government to negotiate with all States and Territories in much the same way as has been done for the national Corporations and Criminal schemes. We consider that this would be far less socially disruptive than relying on a controversial (and no doubt contestable) application of the Corporations

power that will in any event only extend coverage to about half of all employers.

The writer would be happy to speak directly with the Committee or provide further written material should this be required.

Yours faithfully

Blue Mountains Community Legal Centre

Per:

Mark MacDiarmid

Principal Solicitor

