

Submission

to

Senate Employment, Workplace Relations and Education
Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

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

9 November 2005

Dear Secretary

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

Thank you for the opportunity to make a submission to the Committee in relation to the *Workplace Relations Amendment (Work Choices) Bill 2005*. This Bill represents the biggest proposed legislative change of the law regulating work relations in Australia in over a century. It is critical to get things right.

The legal regulation of work as it impacts on those in precarious forms of work, such as casual work, is a particular focus of my research expertise. It is in precarious forms of work that the most vulnerable workers are to be found and among them women over-predominate. One of the reasons for this arises from the intersection between work and family.

From my knowledge of this area of work and law, both in Australia and in other OECD countries, it is clear that the matter of first importance in providing a fair system of work is to ensure there is an adequate 'safety net'. In relation to this I make the following specific submissions regarding this *Bill*:

1) The Australian Fair Pay and Conditions Standard is inadequate

- The Australian Fair Pay and Conditions Standard for personal leave (Part VA, Div 5) and parental leave (part VA, Div 6) is inadequate in that it provides only very limited scope for lawful absences from work for matters arising from the intersection of family/care and work.
- A more appropriate standard for today's workplace is the one adopted in the United Kingdom, which provides workers with a right to request greater flexibility in a whole range of matters (including hours of work, arrangement of hours, place of work), which the employer must consider but may refuse on reasonable grounds.

- A standard similar to that in the UK should be adopted as part of the Australian Fair Pay and Conditions Standard.

2) Awards will no longer facilitate the participation of workers with family responsibilities in decent work

- Section 116B(1)(b) of the *Bill* makes “transfers from one type of employment to another type of employment [eg, full-time to part-time]” a non-allowable matter in awards.
- This means that award clauses providing a mechanism for workers to transfer between full-time and part-time work and thereby maintain a secure foothold in the labour market when they have very young children will no longer be lawful. It will prevent provisions like those established in the recent *Family Provisions Test Case* (which require a reasonable consideration of the needs of both employees and employers) from being included in awards.
- It also means that workers under awards can be kept indefinitely as casuals. ‘Conversion clauses’ (including those that incorporate reference to reasonable consideration of the needs of both employers and employees) will no longer be able to be included in awards.
- It is submitted that section 116B(1)(b) should be removed from the Bill.

3) Workplace Agreements will not provide protection to vulnerable workers or equality for all workers

- The evidence to date, including the reports on certified agreements and AWAs presented to the Australian Parliament by the DEWR and the Office of the Employment Advocate, shows
 - that family-friendly provisions in the majority of agreements generally do not offer a level of protection any higher than that provided for by the safety net ; and
 - that there are very few family-friendly provisions included in agreements in male dominated industries, ie family-friendly provisions in statutory agreements reflect the gender segregation of Australian industry.
- It is obvious, therefore, that agreement making cannot be relied upon to deliver conditions that will enable *all* workers equally to enjoy decent secure working conditions and balance work and family life.

Without an adequate safety net, workers are condemned to precarious work as the only means of accommodating the demands of work and family life.

There are a number of other matters relating to this Bill that I wish to comment upon, and I shall do so in a further submission that I make with fellow academics.

Yours sincerely

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