

Submission

to

Senate Employment, Workplace Relations and Education
Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

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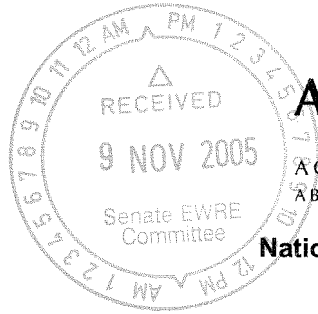
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**National Industry Association
for Disability Services**

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

The Workplace Relations Amendment (Work Choices) Bill, introduced into Federal Parliament on 2 November, could adversely affect disability employment unless changes are made to it.

The increased scope for flexibility in employment conditions offered by the Bill could assist employees with disabilities, who sometimes require non-standard work conditions. However, it is crucial that employees with disabilities are protected against the exploitation of that flexibility to disadvantage them.

ACROD, the national body representing non-government disability service providers, has three specific sources of concern. The changes to the Bill that we propose here are minor and would not weaken the intent of the Bill.

1. **Wage determination in Disability Business Services:** According to the Bill, the Australian Fair Pay Commission (AFPC) may determine a *special Federal Minimum Wage* for employees with a disability. Section 90 U states that a special Federal Minimum Wage could be expressed as an actual monetary amount or as a *method* for calculating a monetary amount. Our concern is that this wording could imply that only one method (“a method”) will apply.

If this interpretation is correct, it would undermine the Australian Industrial Relations Commission’s recent decision to allow disability supported employment services (also known as Disability Business Services) to select from a range of authorised wage assessment methods. The decision was made in response to an application to vary the LHMU Supported Employment (Business Enterprises) Award. Disability Business Services employ more than 17,000 Australians with moderate to severe disabilities.

The AIRC’s important decision puts in place a process to ensure that all Disability Business Services pay award-based wages that are transparently linked to each supported employee’s level of productivity and competency. In its intervention in the case the Commonwealth supported this position, which also has the support of ACROD, other employer representatives, the LHMU and ACTU and the family representatives of supported employees.

The Bill's implication that only one wage assessment method will be allowable in Disability Business Services may well be unintentional. The Bill's Explanatory Memorandum (page 93) supports this view by interpreting Section 90 U (1) as "specifying a method *or methods* for calculating a dollar amount (eg as a percentage of another rate)" [emphasis added].

A minor amendment to the Bill would make unambiguous its intent to recognise a number of methods, rather than "a method".

The IR Bill's drafters may have had in mind those employees in the open workforce who are unable to work at full productivity because of a disability. For them, the Supported Wage System is the only allowable method of determining an award-based wage.

Victorian advocacy group DEAC has appealed against the AIRC's decision, arguing that the Supported Wage System method should be the only allowable method in Disability Business Services. Were this appeal to be successful, the effect on employment in Disability Business Services would be disastrous. It is important that the Workplace Relations legislation not inadvertently assist DEAC's appeal by limiting the allowable wage determination methods to only one.

2. **The phase in of award-based wages:** A related concern is the potential conflict of timelines between the AFPC's determination of a special Federal Minimum Wage (by next Spring) and the phase in of award-based wages in Disability Business Services.

In April 2004, the Prime Minister announced the Business Services Assistance Package, which allows the phase-in of award-based wages until May 2008. This measure in the Package, which the disability sector welcomed, was designed to prevent the closure of Business Services and the consequent loss of employment opportunities for workers with disabilities. The AIRC's recent decision mirrors the timetable announced in the Package.

Again, this possible conflict of timetables may be unintentional, but it needs resolution.

3. **The definition of employee with a disability:** The Bill requires the AFPC to have regard to the principles contained in anti-discrimination law, including the Commonwealth Disability Discrimination Act 1992 (DDA). It will be illegal to dismiss an employee because of his or her disability. While this is welcome, the Bill defines an employee with a disability narrowly as someone who qualifies for a Disability Support Pension (in the Social Security Act sections 94 or 95). This is a very restricted definition of disability in terms of protecting employees with disabilities from unfair dismissal. It will exclude many people with a disability who are able and willing to work but don't qualify for DSP.

The DDA exists in recognition of the reality that people with disability face an increased likelihood of prejudice in employment and other public situations.

We recommend that the definition of employee with a disability in the Work Choices Bill be made consistent with that contained in the DDA.

ACROD believes that these amendments would clarify the legislation in a way that would help protect the employment opportunities and rights of people with disabilities.

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About ACROD

ACROD is the national peak body for disability services. Its membership includes 550 non-government non-profit organisations that collectively operate several thousand services for Australians with all types of disabilities.

ACROD assists its members to provide quality services and life opportunities to Australians with disabilities.

In seeking to achieve its purpose, ACROD provides advice to governments in relation to all significant disability matters. It also provides a wide range of information to the disability services sector through e-mail publications, a magazine, conferences and seminars. Its consultative structures include a system of issues-based National Committees and State Sub-Committees, forums and interest groups. ACROD's submissions to Government are developed in consultation with members.

ACROD has a National Secretariat in Canberra and offices in every State and Territory. The organisation as a whole is governed by a national Board which includes the elected Chair from each State/Territory Division as well as representatives elected directly by members.