Submission

to

Senate Employment, Workplace Relations and Education Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

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REDFERN LEGAL CENTRE

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

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About Redfern Legal Centre
Redfern Legal Centre (RLC) is an independent non-profit community-based organization with a prominent profile in the Redfern area of over 25 years' standing. We provide free, confidential legal advice and assistance, a Women's Domestic Violence Court Assistance Scheme, a credit and debt service, a service for students at Sydney University and a tenants' advice service. We host the local Aboriginal Community Justice Group. We represent individuals and community groups in civil liberties and discrimination matters. Redfern Legal Centre also provides community legal education programmes and advocacy in law and policy reform.

This submission is based on our experiences of people in the employment market who are trying to seek remedies when failures occur.

We are not working from theoretic models but from lived experience. We have not had a chance to do a proper legal analysis of the Bill itself due to the extremely short period allowed for consultation.

Summary of submission
This submission addresses the adverse effects this legislation may have on the most disadvantaged members of our community, many of whom are or will become RLC's clients. It also refers to the submission of the National Welfare Rights Network concerning the impact of this legislation on the transition from welfare to work. Finally, it discusses the practical impact of the implementaiton of the legislation on Redfern Legal Centre staff and resources.

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Our greatest concern is how to meet the additional demand for our services from disadvantaged workers.

1. *Effects on disadvantaged people*

1.1 Unfair dismissal

The legislation abolishes 'unfair dismissal' rules for two-thirds of the work force, those being for people working in firms with less than 100 employees. This will allow employers to coerce workers into accepting sub-standard wages and conditions for fear of instant dismissal.

While unlawful terminations will still be protected under the law, unfair dismissals will no longer be applicable to small businesses. Abolishing unfair dismissal laws will impact on 3.7 million Australians working in businesses with less than 100 employees (ABS May 2004). Without unfair dismissal laws, workers in small businesses can be retrenched without recourse to legal redress through the IARC.

In a recent case, a 19 year old male employee was dismissed for losing a key and when discussion arose he was physically assaulted. He worked for a small business (less than 100 employees). He went to the NSW IRC for unfair dismissal and was granted 6 weeks' wages. The new unfair dismissal laws will give him no effective avenue for redress.

A female employee in her late thirties worked for a security firm (small business), as a permanent part-time employee. She worked 10-hour shifts with no time for breaks. She experienced gastric and stomach upsets which required her to go to the bathroom. As a result, she missed an alarm for the first time in her employment history. No one was harmed. She was fired the next day without consideration to the circumstances or previous work history. Under the changes, this employee will have no recourse to unfair dismissal laws.

In another case, a 38 year old female employee was terminated on the date that she was due to go on maternity leave. She had negotiated 12 months leave without pay. She was on a continuing contract but her employer tried to claim that she had a fixed term employment and that it had expired. The

unfair dismissal case settled after the employee made an application to the NSW IRC, and before it had gone to conciliation.

Under the new laws, the unfair dismissal aspect would have to be dealt with as a breach of contract through a court, a complex, alienating and costs-based jurisdiction. Legal Aid would not be available for such cases.

Workers struggling to meet mortgage or rental payments, without an income and while trying to find alternative employment, would have to find the time and resources to obtain legal assistance and to commence court proceedings, while faced with the threat of an adverse costs order. It is not realistic to expect that this avenue of redress would be accessible to low income workers.

1.2 Inequality of bargaining power

Employees and employers have unequal bargaining power, particularly unskilled/casual employees, where the majority are women, young people from non-English speaking backgrounds and people with disabilities.

To date most Australians have enjoyed the protection of a strong award system. Approximately 1.6 million Australian working people rely on awards to protect their pay and conditions. Many others whose employment is based on agreements have relied on awards as the basis for collective negotiation to ensure their basic rights and conditions.

In the new legislation, workplace agreements will no longer be based on awards, but will merely have to satisfy five minimum conditions, which are relevant to all industries. The new minimum standards are: a minimum hourly rate of pay (currently $12.75); 10 days sick leave per year; 4 weeks annual leave; unpaid parental leave; and a maximum number of weekly working hours.

Basic rights such as paid overtime, standard hours of work, allowances, weekend and shift work rates pay. annual leave loading and redundancy will no longer be guaranteed. The Government has also cut a number of important conditions from awards. These include conditions such as skill-based pay structures, and bonuses. In the absence of award standards, many working people will be forced to negotiate with their employer for even the most basic rights and conditions.

More than 60% of award-only workers are women and thus, women will be more adversely affected by these changes. People who are not fluent speakers of English, have low levels of literacy or formal education, and those with disabilities that impact on their communication and cognitive skills will be particularly disadvantaged.

Employers will be able to negotiate from a position of superior access to information about the financial position of the business, anticipated income and sustainability, and the relevant laws and policies applicable to employment and their industry.

Information imbalance is a recognised failure point in markets, leading to inefficient outcomes.

Workers or jobseekers with little or no formal qualification or experience who attempt to use their right to 'negotiate' for higher pay or better conditions than those offered by the employer, can readily be declined employment in favour of a candidate who will accept the lowest terms. While in the economy as a whole unemployment rates are not overly high, it is in this part of the jobs market that the most disadvantaged workers have much higher levels of unemployment, and will be forced to compete most fiercely for lower pay and conditions in order to secure employment.

1.3 Reduced wages

The new workplace laws also aim to freeze and potentially to reduce the minimum wage. The legislation removes the powers vested in the Industrial Relations Commission. In the future, minimum wages will be set by a 'panel of experts' and the priority will be to ensure that wages stay low.

In addition, the legislation removes the "no disadvantage" test for AWAs, leaving only four minimum conditions that employers cannot force workers to give up. These changes make it very difficult for workers to undertake collective negotiation with employers and thus force people to accept lower wages and conditions in order to secure a job.

An increase in AWA individual contracts will result in less family-friendly working hours and, in turn, lower standards of living.

A male employee under a negotiated AWA received an hourly rate $5.00 more than the award rate. But he was expected to work up to 112 hours per fortnight. Any hours worked after 76 per fortnight were not to be paid overtime but to be given as time off in lieu or payment of salary-sacrificed superannuation, or accrued as a further annual leave entitlement.

Under the award, on shifts longer than 7.6 hours or the day shift, an employee is entitled to time and a half and double time. This would result in far higher wages. The removal of the 'no disadvantage test' will mean more of these clauses will be approved where the employee is unable to negotiate effectively on their own behalf.

While the most disadvantaged workers will experience deteriorating pay and conditions, those with high skills in sought-after areas may be able to maximise their advantage, leading to increased inequality in the workforce. Such divisions weaken a society and ultimately undermine economic efficiency, as social cohesion and community consensus play an essential role in economic development.

Pay cuts will put added stress on families already dealing with financial pressure. Many workers will be forced to work longer hours, weekends and nights (in the absence of extra pay) to ensure their family's survival. This affects the community at large as many workers provide not only for their immediate family members, but for their extended family as well.

Workers in the low-end of the workforce are already vulnerable. The absence of award protection will result in increased vulnerability. Low income households will be unable to protect the balance between family and work, leading to intergenerational disadvantage. Children growing up in households affected by low income, long and irregular working hours, housing instability and lack of parental capacity to assist with education and physical development are more likely to have difficulty obtaining vocational skill and employment, or in forming successful relationships.

The Australian community runs the risk through these reforms of creating a permanently alienated underclass with little commitment to the peace and safety of the community. The consequence is a diminished quality of life for

all Australians, including those with higher personal wealth, as streets and public places become unsafe and unpleasant.

2. ***Effects on the transition from Welfare to Work***

We endorse the following comments from the National Welfare Rights Network:

The legislation proposes major changes to both the Industrial Relations and Social Security systems. The proposed changes to the Social Security system, contained in the "Welfare to Work" package, would mean an increase in the number of people in receipt of Newstart Allowance and hence the number of people required to meet an activity test. The increase in numbers will result from people who would, under the current law, be eligible for Parenting Payment and Disability Support Pension no longer being so and instead moving on to Newstart. Whilst in receipt of Newstart people are required to meet an activity test and harsh penalties result from failure to meet the test.

After the proposed changes have come into effect the penalty for a person receiving Newstart who "refuses to accept a suitable job offer" will be an eight week suspension of payment. Currently an unemployed person is only required to accept a job that pays award wages and adheres to award conditions. Following the Industrial Relations changes if a person refuses to accept a job on the grounds that they disagree with the conditions of work or the contents of the proposed AWA, they may face this eight week suspension of payment.

This means people with disabilities or parents with dependent children who receive Newstart will essentially be forced to take jobs which may be incompatible with their circumstances or face losing their only source of income support for eight weeks.

If people quit a job with unreasonable conditions to look for one with better conditions they will also face an eight week non payment period if claiming Newstart for "leaving a job voluntarily". This further traps people in potentially inappropriate employment. If they are forced to accept a job in the first place or risk losing income support they must then stay in that job or again face a lack of income support.

Under the "welfare to work" changes a person will also face an immediate eight week non payment period if they are "dismissed for misconduct". The new Industrial Relations changes will make it hard for a person to prove whether or not they were fired for misconduct, as the only legal protection that they will have is if they are fired "unlawfully". Most people will not have the financial resources to challenge their sacking in the courts and prove they were not fired for misconduct.

The intersection of Industrial Relations reform and the "welfare to work" package mean there is a very real risk that a person with dependent children, or a person with a disability, could be left with no income for an eight week period. It is doubtful that this will help a person obtain employment and move from welfare to work.

The savings provisions for both Industrial Relations reform and "welfare to work" are flawed. Current income support recipients and employees will not be affected by the changes; however, if a person's circumstances change - for example, they change jobs or reclaim a social security payment after going off payment temporarily - they will be subject to the new conditions. This may mean receiving a lower rate of social security payment with compulsory job search requirements and/or the requirement to enter into an AWA.

Parents and people with disabilities who will be moved onto Newstart have been promised they will only be made to seek work that they are capable of; i.e. work within school hours for parents and work suitable to a persons ability for people with a disability. The new Industrial Relations changes will make deciding what jobs are suitable for whom a far more complicated task. We are not confident that Job Network providers will be able to prevent inappropriate referrals and their consequences.

"Under the 'welfare to work' changes a person will also face an immediate 8 week non payment period if they are 'dismissed for misconduct'. The new industrial relations changes will make it hard for a person to prove they were not fired for misconduct, as the only legal protection that they will have is if they are fired 'unlawfully' because discrimination laws have been broken. Most people would not have the financial resources to challenge their sacking in the courts.

Under the Social Security Act there is a requirement that a person accept a 'reasonable' offer of work or else be cut off employment benefits. At the

moment, a person is protected from exploitation by 'reasonable' meaning 'at award pay and conditions'. Once these are gone after 1 July 2006, refusing to accept a suitable job could result in an 8 week non-payment period. Following the Industrial Relations changes, if a person refuses to accept a job on the grounds they disagree with the contents of the AWA they may face this 8 week suspension of payment. The key difference is that an unemployed person must accept any job under the IR reforms.

3. *Effects on Redfern Legal Centre*

3.1 Effects on RLC employees

RLC employees currently enjoy the protection of a negotiated and NSW-registered Enterprise Agreement. Although the salaries paid to staff are not particularly high by comparison with salaries for legal and paralegal staff in the private or government sector, RLC is able to offer a range of flexible working arrangements and family-friendly conditions that assists it to attract and retain highly skilled and sensitive personnel.

However, the employers at RLC, voluntary members of a management committee, are not in control of the financial resources available to allocate to salaries and other expenses.

These decisions are under the control of the government agencies that provide our funding. (Redfern Legal Centre runs six different services with nine different sources of funding. All funders have different requirements for compliance.)

At present most funders offer funding on the assumption that we would at least provide pay and conditions in accordance with the SACS award.

Most, but not all, allow us to make over-award payments and offer over-award conditions provided that we meet service output requirements. However this is not always nor is it necessarily to be the case. We face the prospect of being unable to retain staff or meet commitments under our Enterprise Agreements if our funding resources were to be pared back to require us to meet the minima set out in this legislation.

According to the five minimum standards, RLC employees will only be entitled to a minimum hourly rate of pay (currently $12.75); 10 days sick leave; 4 weeks annual leave; unpaid parental leave; and a maximum number of weekly working hours.

This means that basic rights such as overtime pay, standard hours of work, allowances, weekend and shift work rates of pay annual leave loading and redundancy will no longer be guaranteed.

The following overview sets out the impact of these changes compared to the entitlements in the RLC Enterprise Agreement:

Hours of work
The Redfern Legal Centre Enterprise agreement provides that employees shall be entitled to overtime rates where the employee is required to work outside the normal spread of hours. Overtime shall be paid at time and one half for the first three hours, and double time thereafter.

In addition, employees who are authorised to work overtime on the weekends will be entitled to overtime rates for a minimum 3 hours, plus the time taken to travel to and from the place of work.

Under the new 5 minimum conditions, RLC employees will not be entitled to the above benefits unless specifically negotiated with their employer, unlike under the award system.

Allowances
Under the RLC Enterprise Agreement, employees who are required to use their motor vehicle in the course of duty, shall be paid an allowance per kilometre as set out in Item 2 of Table 2 of the SACS award. The employee is also entitled to reimbursements and amenities.

Under the 5 minimum standards, RLC employees would lose such entitlements.

Leave
According to the five minimum conditions, employees may no longer be entitled to annual leave loading. The RLC Enterprise Agreement provides for annual leave loading of 17.5% of the ordinary rate of pay and the loading shall be paid twice a year.

In addition, the agreement provides an employee who constitutes a primary caregiver up to 14 weeks leave on full pay with the balance of up to 38 weeks being unpaid. The five minimum conditions do not provide for any paid parental leave and thus RLC employees may lose this benefit.

Under the RLC Enterprise Agreement, an employee is entitled to 15 days of paid sick leave. Sick leave may also be accrued. The five minimum conditions only provide for 10 days of sick leave for each year of service.

Termination
Under the new legislation, employees working in firms with less than 100 employees will be subject to instant dismissal.
Under the RLC Enterprise Agreement, an employee may only be dismissed without two weeks notice, in writing, in the event of serious misconduct.

Thus, the legislation would put RLC employees at risk of instant termination without notice.

Redundancy
Under the RLC Enterprise Agreement, RLC employees are entitled to consultation before redundancy as well as severance pay. The new legislation does not provide for such entitlements.

3.2 Effects on workload

Redfern Legal Centre is a community legal centre that attracts low income-earning clients. The individuals who seek legal advice at the centre are those that will be most adversely affected by the changes in the Industrial Relations legislation. The effects of the new laws will result in these individuals having fewer resources to pursue legal redress, should such need arise.

We anticipate a considerable increase in the number of people seeking assistance. Many people will be confronting individual agreements for the first time and will seek assistance in understanding the meaning of the contract. People who may have restricted access to union representation will be seeking advocates to assist in negotiations with employers.

People in receipt of social security benefits will seek assistance about the impact of accepting, or refusing, casual and part-time work that impacts adversely on their entitlements and their capacity to care for dependent children and other family members.

Those who have been dismissed or required to meet unachievable working conditions will seek our assistance. Where we have up until now been able to refer people with limited initial advice to represent themselves through the IRC in relation to unfair dismissal matters, those who have an entitlement to enforce their rights in discrimination or contract jurisdictions will require much more intense and ongoing levels of assistance, with more

stringent evidentiary burdens, and greater risk of adverse costs outcomes if they are unable to prove their cases.

We have observed generally that claims such as discrimination are difficult to prove because the applicant must demonstrate matters that are within the knowledge of the respondent. This is particularly acute for those who are discriminated against at the point of job application, because of the confidential nature of the application process and the lack of access to information about the characteristics of the other (preferred) candidates.

Case work will be complicated by the increased numbers of clients in insecure and uncertain circumstances, who will have so many competing demands on their resources and coping abilities that additional applications may be required for extensions of time or for out of time applications.

It is likely there will also be a greater number of people requiring assistance in relation to alleged breaches of new and unfamiliar social security regulations applicable to jobseekers in receipt of disability and supporting parents payments.

Overall we anticipate a significant increase in the number, extent and complexity of demand on our services as a result of these changes. The limited access to advice proposed in conjunction with these reforms (which will only relate to alleged unlawful termination) will not be adequate to meet the needs of the communities we serve. We understand that the offer of assistance will be subject to a complex application process and a merits test. For workers with low skills in English language or literacy, assistance from organizations such as RLC will be sought to prepare applications to be considered as a precondition for access to the promised assistance.

Apart from our immediate geographical area RLC is the centre of last resort for callers from throughout NSW who have no other source of assistance. Through this experience we are aware that the lack of ready access to legal advice services for people in regional, rural and remote areas will exacerbate the difficulties for low income workers and welfare recipients in these areas.

The implementation of the bill will raise practical complexities which will require additional resources, but there is no indication that CLCs such as RLC will be funded to meet the increase in demand for legal services

caused by these changes. Such reforms should be accompanied by resource provision to those who will be expected to provide services to affected persons.

Conclusion

Under the new legislation, enterprise agreements will no longer be based on awards, but on five minimum conditions. Such changes will adversely affect the community at large as well as workers in services who will be attempting to respond to the needs of low-income employees and jobseekers.

Entitlements such as those outlined in the RLC Enterprise Agreement relating to hours, leave, allowances, termination and redundancy will no longer be guaranteed as they go well beyond the five minimum standards provided for by the Act.

Overall, we consider that the proposed reforms will have a negative impact on Australian society and we urge the Government to reconsider in this light.

Yours sincerely,
REDFERN LEGAL CENTRE

Helen Campbell,
Director