

Submission

to

Senate Employment, Workplace Relations and Education
Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

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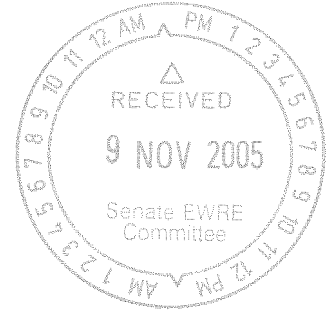
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Committee Secretary
Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005
Senate Employment, Workplace Relations and Education Committee
Parliament House
CANBERRA 2600 ACT

9 November 2005

Dear Sir/Madam

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

The National Human Rights Network of the National Association of Community Legal Centres (**NACLC**) welcomes the opportunity to participate in the Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005.

The Senate Committee plays a vital role in ensuring that the Government's widespread changes to industrial relations law in Australia accord with our human rights obligations and the government's human rights commitment.

About the National Association of Community Legal Centres (NACLC)

National Association of Community Legal Centres (**NACLC**) is the peak body representing the eight state associations of community legal centres (**CLCs**) and 207 CLCs nationally.

Community legal centres are located throughout Australia in metropolitan, outer-metropolitan, regional, rural and remote Australia. Community legal centres are experts in "Community Law" – the law that affects our daily lives. They provide services to approximately 350,000 clients per year. They are often the first point of contact for people seeking assistance and/or the contact of last resort when all other attempts to seek legal assistance have failed.

While there is much diversity amongst community legal centres, there is also much in common. One of those features is a commitment to justice for everyone. Each community legal centre pursues this end in ways particular and appropriate to the region in which it is located, and the community it serves.

Many community legal centres provide legal advice, casework and advocacy around legal and social justice issues. They also conduct community legal education and participate in law reform where laws and/or procedures that hinder justice are identified. Furthermore, NACLC and several member organisations have been following the proposed industrial relations reforms in Australia since they were first announced in May 2005. As such, CLCs are well placed to provide informed submissions to this Inquiry.

Purpose of this Submission

NACLC would like to begin by endorsing the submissions made by its member organisations, these include: the National Employment Law Network, the Combined Community Legal Centres Group of NSW, the Redfern Legal Centre and the Illawarra Community Legal Centre. Our submission supplements these submissions.

Our submission does not attempt to address all of NACLC's concerns with the Workplace Relations Amendment (Work Choices) Bill 2005 (**the Bill**). As we are the National Human Rights Network of NACLC, we have limited our submission to those areas of the Bill that most impact on human rights.

We understand from the amended motion for referral that the Committee does not intend to cover issues which it has previously reported on. However, we felt that the Committee may benefit from a general survey of the human rights implications of the Bill and have tried to include a more overall analysis.

We have summarised our concerns below and would be happy to address the Committee or provide further information if that would be useful to the Committee's deliberations.

Human Rights Concerns

As you know Australia has entered into a number of human rights treaties at an international level. These treaties are legally binding on Australia and form part of our human rights obligations.

The Government has also committed itself to human rights through its revised *National Action Plan on Human Rights*, released in December 2004. The Prime Minister's foreword to the Plan notes:

We continue to strive to protect and promote human rights and to address disadvantage. The Government's reform agenda is actively ensuring that each member of the Australia community has the opportunity to participate in the life of our community and to experience the benefits and accept the responsibilities that flow from such participation.

Despite the Government's commitment to human rights and Australia's international obligations, there are serious human rights concerns about the Government's proposed industrial relations reforms.

The table below provides a brief guide on some of the international human rights obligations relevant to the area of industrial relations that Australia has agreed to adhere to by ratifying international agreements. The last column of

the table identifies the ways in which the proposed industrial relations reforms are likely to result in Australia violating its international obligations.

IR ISSUE	INTERNATIONAL HUMAN RIGHTS STANDARD	EFFECT
1. Unfair dismissal	<i>ILO Termination of Employment Convention.</i>	The proposed exemption of firms employing fewer than 100 employees from the termination of employment laws undermines Australia's ratification of this convention
2. Setting of minimum wages and awards	<p><i>International Covenant on Economic Social and Cultural Rights</i>¹</p> <p>Article 7: everyone has the right to the enjoyment of just and favourable conditions of work which ensure, in particular:</p> <p>(a) Remuneration which provides all workers, as a minimum, with:</p> <p>(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;</p> <p>(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;</p>	<p>The Government's minimum wage submissions to the Australian Industrial Relations Commission (AIRC) have always been less than the amount awarded. If the Australian Fair Pay Commission (AFPC) has Government appointees then there is a concern that wages will stagnate.</p> <p>In the past workplace bargaining in Australia has been underpinned by a safe and secure set of minimum, skills-based wages reflecting the nature and complexity of work, and minimum conditions of employment that reflected the nature of the industry to which they applied, administered by the independent tribunal – AIRC.</p> <p>Employees who were not engaged in bargaining; overwhelmingly women and part time employees, relied upon this safety net. Those workers who were unable to bargain were protected by the AIRC, which was charged with adjusting the minimum wages and conditions, balancing the needs of the low paid with the desire for high employment, low inflation and high productivity.² Under the proposed changes this independent protection is not guaranteed.</p>
	<p><i>Convention on the Elimination of all forms of Discrimination Against Women</i>³</p> <p>11 (d) provides that governments must take steps to ensure equality between men and women, particularly 'the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work'</p>	<p>Where the proposed reforms are likely to have a greater negative impact on single mothers and women generally, then this is a contravention of this obligation.</p> <p>The reforms may be indirectly discriminatory. For example, requirements to work full time, overtime or on rotating shifts appear to be fair because they apply to all employees equally. However, workers with family responsibilities, who are much more likely to be women, will often be disadvantaged by them, for example, by being unable to apply for promotion to a position if it requires overtime.</p>
	<i>ILO Convention 131 on Minimum Wage</i>	The proposed reforms are likely to be in

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	<i>Fixing</i> ⁴	violation of this obligation.
3. Negotiating awards and/or conditions between employees and employers	<i>International Covenant on Economic Social and Cultural Rights</i> Article 6 – Right to freely chosen work	The pressure being put on workers to sign AWA’s or individual contracts may breach the right to freely chosen work.
	<i>International Covenant on Economic Social and Cultural Rights</i> Article 8 - Right to join a trade union <i>International Covenant on Civil and Political Rights</i> ³ Article 22 - Right to join a trade union <i>ILO Convention on the Right to Organise and Collective Bargaining</i> (Convention 98)	<p>The International Labour Organisation (ILO) has concluded that, in practice, Australia’s <i>Workplace Relations Act 1996</i> already allows employers to deny the right to collective agreements.⁶ The ILO has consistently requested that the Australian Government amend the legislation to bring it into line with the <i>Convention on the Right to Organise and Collective Bargaining</i>.⁷ In a case about the 1998 waterfront strikes, the ILO found that the <i>Workplace Relations Act 1996</i> was in breach of the right to negotiate work conditions collectively.⁸ To date the Federal Government has not taken the necessary steps to address this fundamental breach of human rights in the legislation. The proposal to strengthen the individual contracts system established in the <i>Workplace Relations Act 1996</i> will further disadvantage workers’ right to collective bargaining, and thus further breach Australia’s international obligations under the <i>Convention on the Right to Organise and Collective Bargaining</i>.</p> <p>As Sharon Burrow has recently noted that ‘proposed changes offend Convention 98 on the ground that:</p> <ul style="list-style-type: none"> •It fails to encourage collective bargaining. •It actively discourages collective bargaining. •It offends the autonomy of the parties to reach agreement.⁹ <p>The ILO Committee on the Application of Standards recently noted that the ILO Committee of Experts had been making comments for several years on certain provisions of the <i>Workplace Relations Act</i>, particularly in relation to the exclusion from the scope of application of the Act of certain categories of workers, the limitations on the scope of union activities covered by protection against anti-union discrimination and the relationship between individual contracts and collective agreements.¹⁰</p>
	<i>International Covenant on Economic Social and Cultural Rights</i> Article 7 (a)(i) fair wages and equal remuneration	No worker should have their relevant award classification rate lowered. The Government have not guaranteed that no worker will be worse of under the new system. Again this

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	<p><i>Convention on the Elimination of all forms of Discrimination Against Women</i> (Article 11 (d))</p>	<p>is likely to affect people with less individual bargaining power, including women with family responsibilities.</p>
<p>4. The balance between family and work</p>	<p><i>International Covenant on Economic Social and Cultural Rights</i> Article 7(a)(ii) - remuneration should provide ‘a decent living for themselves and their families’</p> <p>Article 7 - work should include: (d) Rest, leisure and <i>reasonable limitation of working hours</i> and periodic holidays with pay, as well as remuneration for public holidays [emphasis added]</p> <p>Article 10(2) - ‘Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.’</p> <p><i>Convention on the Elimination of all forms of Discrimination Against Women</i> Article 11(2)(c) - ‘prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: ...To ... enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities’</p> <p><i>International Labour Organization Convention Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities (Convention 156)</i>¹¹ - ensure that family responsibilities shall not... constitute a valid reason for termination of employment;¹² and - create effective equality of opportunity for men and women workers, to take measures to take account of the needs of workers with family responsibilities in terms and conditions of employment.¹³</p>	<p>As outline above, the proposed reforms could potentially undermine Australia’s obligations under these conventions to promote a balance in family and work.</p>

Furthermore, the proposal to establish a national system of workplace relations relying on the corporations power in the Constitution, will remove rights from Australian workers, who have some degree of protection under

State systems. As highlighted above, international legal commitments oblige the Government to respect and protect the human rights of individuals. The removal of rights by establishing a national system of workplace relations is a failure to respect and protect the human rights of individuals and would amount to a breach of international law.

As can be seen, NACLC has serious concerns about the human rights implications of the Bill. We urge the Committee to take these concerns into consideration during its deliberations.

NACLC thanks the Committee for the opportunity to contribute to this inquiry and would welcome the opportunity to further elaborate on the issues raised in this submission should the Committee decide to hold a public hearing or require further information.

Yours sincerely

Julie Bishop
Director
National Association of Community Legal Centres

¹ Ratified by Australia in 1975.

² ACTU & ICFTU President Sharan Burrow, Address to International Labour Organisation, 9 June 2005, Geneva, Switzerland.

³ Ratified by Australia in 1982, but with a reservation on Article 11 regarding provision for maternity leave.

⁴ Ratified by Australia in 1973.

⁵ Ratified by Australia in 1980.

⁶ ACTU & ICFTU President Sharan Burrow, Address to International Labour Organisation, 9 June 2005, Geneva, Switzerland.

⁷ 'Protecting Human Rights in Australia – Fact Sheet 15: Workers' Rights', Public Interest Advocacy Centre (2004).

⁸ Complaint against the Government of Australia presented by the International Confederation of Free Trade Unions (ICFTU), the International Transport Workers' Federation (ITF), the Australian Council of Trade Unions (ACTU) and the Maritime Union of Australia (MUA), Report No. 320, Case No. 1963.

⁹ ACTU & ICFTU President Sharan Burrow, Address to International Labour Organisation, 9 June 2005, Geneva, Switzerland.

¹⁰ Report of the Committee on the Application of Standards, International Labour Conference Provisional Record Ninety-third Session, Geneva, 2005, Part 2, Third item on the agenda: Information and reports on the application of Conventions and Recommendations p 56. Rights Australia website: http://www.rightsaustralia.org.au/display/research_papers.html (accessed 20/09/05)

¹¹ ILO 156 was opened for signature in 1981 and entered into force for Australia on 30 March 1990, [1991] ATS 7. Second Reading Speech to the Human Rights and Equal Opportunity Legislation Amendment Bill (No 2) 1992 *House of Representatives Hansard* 3 November 1992, pp 2399-2400. The then Industrial Relations Act was amended also to ensure that the Australian Industrial Relations Commission took account of the family responsibilities of workers in its work.

¹² Article 8.

¹³ Article 4(b). See also the Preamble and articles 3(1) and 6. The family responsibilities provisions were inserted into the *Sex Discrimination Act* in 1992 to give effect to certain of the provisions of the ILO Convention 156. HREOC, *Striking the Balance* (2005) p 82.