

Submission to the Senate, Employment, Workplace Relations
and Education Committee

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

9 November 2005

1. Introduction

The Northern Territory Legal Aid Commission ('NTLAC') aims to ensure that the protection or assertion of the legal rights and interests of people in the Northern Territory are not prejudiced by reason of their inability to:

- Obtain access to independent legal advice;
- Afford the financial cost of appropriate legal representation;
- Obtain access to the Federal or Territory legal systems; or
- Obtain adequate information about access to the law and legal system

The NTLAC makes this submission to the Inquiry on the basis that our service and a large majority of our clients may be affected by the proposed changes. In particular the NTLAC represents a diverse population base whose unique characteristics include: people from non-english speaking backgrounds; a large proportion of unemployed people who are receiving Centrelink allowances or CDEP; and Aboriginal or Torres Strait Islander people comprise 30% of the population with the majority of this group aged under 25. We believe that the proposed regime is likely to impact adversely on these groups.

2. Timeframe for Inquiry

The Workplace Relations Amendment (Work Choices) Bill is 691 pages long and the explanatory memorandum is 570 pages long.

The changes being proposed are large and complex. The impact which these changes will have on the Australian community is great. It is of concern that the time frame for submissions to the Inquiry is so short.

More time is required to enable interested stakeholders to fully consider the changes being proposed, their actual or potential impact and develop and articulate any concerns identified.

It is suggested that no detriment would be suffered by delaying the passage of the Bill until the public has had a full opportunity to comment and these comments have been taken into account in the development of the new regime.

3. Impact on the Commission

The Commission is concerned that the proposed changes may impact on our services.

In particular, the literature states that:

Employees who believe they have been unlawfully terminated will be eligible to receive up to \$4,000 in legal advice. This will be based on the merits of the case if they have a certificate from the AIRC and if they are assessed as having financial need.¹

Some concerns arise from this. Firstly it is not clear what the process will be to employees obtaining a certificate from the AIRC, including the assessment of financial need. On the face of it, we foresee that some of our clients would encounter barriers to obtaining such a certificate. For example, an Indigenous person who speaks English as a second language with low literacy skills living in a remote community may need support and assistance in the initial process of obtaining the certificate. It is not clear what support will be available to such groups.

Secondly, it appears that the \$4,000 will only apply to legal advice. It is not clear what level of assistance will be available for clients to obtain legal representation (as opposed to legal advice) if the legal advice confirms that their claim has merit. If funding is available for legal representation is it capped at \$4,000? What provisions will there be for extending that amount in exceptional circumstances? Such circumstances might include the need to conduct a test case to properly define the parameters of the new regime or where the employer deliberately protracts legal proceedings with the intention of exhausting the employees grant of aid.

Thirdly, it is not clear how the funding for legal assistance would be administered and whether it will be expected that the Commission will play a role in this. If this is required, we would need to make certain administrative changes such as to the Guidelines for legal aid.

Finally, there is a need for clarification on the issue of representation in relation to the penalties that can apply to individuals such as those relating to prohibited content. On our brief reading of the information, it is not clear what legal representation would be available to defend any such action or the manner, if any, that Legal Services will be required to respond to this.

There may be financial implications for the Commission, but without further information it is difficult for the Commission to position itself so that it is best able to identify and meet any gaps in the access to legal information and assistance.

¹ Australian Government, *WorkChoices*, p 11

4. Welfare to Work

The WorkChoices package should be read in the context of the proposals to introduce legislative changes to Centrelink benefits. These changes will be designed to provide support and incentives to Centrelink recipients to move from welfare to employment. Effectively, this could result in a reduction in income for certain categories such as people on a disability pension and single parents. There is a concern that once these changes are introduced there will be a group of people who will be required to accept an offer of employment and that employers may exploit this to reduce the offer to the bare minimum on a 'take it or leave it' basis. This may amount to a loss to the employee after meeting employment related expenses such as travel, clothing and childcare. In addition, the employee will lose other benefits such as Centrelink concessions and housing rebates by taking up employment. If the offer is refused, the suspension or termination of Centrelink benefits may occur.

Further, once an employee accepts this offer they will be unable to leave an untenable position as they will not have their Centrelink payments reinstated.

5. Unequal Bargaining Power

The ability of employers and employees to be flexible and make choices in relation to the conditions of employment relies on the existence of an equal bargaining position. Many employer/employee relationships are already lacking in this element and this has led to workplace bullying, harassment and discrimination on some occasions. There is a concern that certain individuals and groups will not have the capacity to effectively negotiate and maintain their entitlements on an equal footing. The new regime has the potential to further this inequality at all stages of employment:

- **The development of agreements**

The Bill allows the parties to agree to remove conditions such as public holidays, overtime and rest and meal breaks. An inequality in the bargaining power between the employer and the employee will remove the ability of the employee to effectively bargain for anything and will likely result in vulnerable employees receiving the minimum possible conditions.

- **The dispute resolution process**

The Bill only allows third party intervention in disputes between employers and employees a last resort. For vulnerable employees, it is unlikely that they would have the ability to personally raise and satisfactorily address issues of concern with their employer without the assistance of a third party.

- **The termination process**

Restrictions on the application of unfair dismissal laws has the potential to erode basic legal rights, which will further the imbalance between

employers and employees. Employees of businesses with less than 100 staff can be sacked without warning, reason or due process, such as the right to be heard. In the Northern Territory the majority of employers have less than 100 employees.

The ability of employers to sack staff for 'operational reasons' could substantially erode the unfair dismissal rights of all employees. Employers will be able to use 'operational reasons' as the grounds for dismissal in a case which would have amounted to unfair dismissal previously unless the required procedures had been followed in terms of due process and natural justice.

Although remedies will still be technically available for dismissal on the grounds of discrimination, employers will have an expanded ability to dismiss employees without reasons or for operational reasons when in fact the real basis of dismissal is discriminatory.

This imbalance of power between employers and employees may lead to an increase in workplace bullying, harassment and discrimination, with few options for employees to seek redress.

The Bill has the potential to create a situation where certain groups will be especially vulnerable to exploitation and disadvantaged. Groups of particular concern include:

- Centrelink recipients, who may be in breach of their Centrelink entitlements if they do not accept an offer of employment which has a reduction of conditions;
- Youth, who are vulnerable to exploitation due to their age;
- Indigenous people, who in the Northern Territory make up a large proportion of the people who are in receipt of Centrelink or CDEP payments and are more likely to speak English as a second or third language, and experience low literacy.
- People from Culturally and Linguistically diverse backgrounds, who because of language and cultural factors may not feel confident that they can understand or negotiate the terms of an agreement.

6. Conclusion

We recommend a longer period of inquiry to enable these proposed changes to be fully debated and the implications to be fully understood.

In the short time that we have had to consider the Bill, it appears that more consideration needs to be given to ensuring that sufficient safeguards and protections will be available to the employee through related agencies and the provision of legal advice and assistance.