LAUNCESTON COMMUNITY LEGAL CENTRE INC

Submission to the
Senate Employment, Workplace Relations and Education Committee

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

Our Submission is of necessity short as it has been difficult to make informed comment prior to the release of the Draft Bill on 1 November 2005.

We would like to comment on just four issues in relation to the proposed Bill:

1. Impact of removal of Unfair Dismissal Provisions on small business.
2. Impact of removal of Unfair Dismissal provisions as related to persons requiring Centrelink assistance as a result of a termination of employment.
3. Trainees
4. Impact of loss of State based wages system on small businesses and their employees.
5. Community Partners as Bargaining Agents.

Impact of removal of Unfair Dismissal Provisions on small business.

As a Nation we have through our Industrial Relations legislation and practice managed to regulate dissent. Our concern comes as the removal of the conflict regulating mechanism, namely, Unfair Dismissal legislation, which currently allows for access to a cost free jurisdiction for both employer and employee, whilst not preventing either side from availing themselves of representation, legal or otherwise.

Many of our clients come to us very angry about what has happened to them. They have been terminated as the result of the employer abusing their power. They see the employer who wronged them continuing to grow and develop their business and they see a very precarious economic. Their economic security has been threatened sometimes for no good reason. Through the existence of unfair dismissal legislation we are able to channel their anger into a process which allows them to come face to face with the persons who perpetrated this dreadful deed, the removal of their employment. They are demanding justice.

It then falls to us to talk to these workers about what the law can and cannot provide. This can exacerbate the anger but when we are able to channel this through an unfair dismissal process there is provided a regulated environment within which the victim and the perpetrator are able to discuss their differences and come to a resolution. We are not suggesting for one minute that all of our clients ago away accepting what happened to them but having faced the perpetrator seems to give them some solace. It seems to work in a similar fashion to the victim and perpetrator conferences which are being set up in criminal jurisdictions across the nation.

In fact it seems a very cost effective way in which to manage this conflict. The question which we believe has not been explored in relation to the draft Bill is the emotional and economic cost of removing this conflict resolving mechanism. We know that for our clients it allows them to move onto the next position free from the

past. However, removal of this mechanism will mean that the anger is given free rein elsewhere. We believe that there will be an escalation in workplace violence and in workplace vandalism. We are concerned that this jurisdiction is moving away from conciliation and arbitration whilst other jurisdictions are moving toward it. Is it possible that we will see workplaces going up in smoke as a result of this retrograde step. Where is the research in relation to this very important consequence of the removal of access to unfair dismissal legislation for a large percentage of our workforce.

Impact of removal of Unfair Dismissal provisions as related to persons requiring Centrelink assistance as a result of a termination of employment.

Each year we assist/represent persons with alleged unfair dismissals at either the Tasmanian Industrial Commission ("TIC")or the Australian Industrial Relations Commission ("AIRC"). Of particular concern are unfair terminations where the dismissal is based on either: *a downturn in work or where the employer refuses to cite a reason*.
The general, but not universal, client profile in these circumstances is of:

- a middle aged male
- working in a labouring or machine operators position
- in a rural environment,
- with family commitments

and

- with low literacy levels.

Generally they have worked in the same industry their entire working lives and when terminated are often unable to compete in a younger labour market.

Provision of an Employment Separation Certificate by the employer (ESC: document SU001,0110) to Centrelink is required should the ex-employee seek to claim welfare assistance. S196 *Social Security (Administration)Act 1999* provides Centrelink with the power to obtain information, from the employer, about the ex-employee through the ESC. The ESC is subject to FOI legislation, however employers have the right to request that it not be released.

On the ESC the former employer provides:

- the reasons employment was terminated

and

- the amount of monies paid upon termination.

The employer can cite one of the following as the reason for termination.

- Shortage of work or redundancy
- Unsuitability for this type of work
- End of season or contract
- Unsatisfactory work performance
- Misconduct
- Employee ceasing work voluntarily
- Other.

The ESC is often:

- the first time an employee becomes aware of the reasons they were dismissed

or

- a discovery that the reasons stated to them differ from the reasons stated on the ESC

Our experience shows that Centrelink accepts the information provided by the employer on its face and can refuse, otherwise eligible beneficiaries, for up to 13 weeks, or reduce payments for up to 26 weeks. We find that the "TIC" and "AIRC" conciliation process provides the opportunity to inform and educate employers thereby allowing them to resubmit a revised ESC to Centrelink. Without recourse to dispute mechanisms dealing with even this basic level, breadwinners will have no options at all.

Workers are loathe to be perceived as troublemakers for the rest of their employment history. Therefore they are reluctant to take action however Conciliation in the AIRC provides a means for settlement that is acceptable to both employers and employees.

In the past we have been requested by Centrelink to advise as to whether or not an unfair dismissal application has been made and also of the outcome.

In our opinion it is one thing for an employer to terminate someone's employment unfairly but it is an obscenity for a person or organisation to compromise an ex employees future income and prospects in this way.

The question then becomes if the Draft Bill is passed in its current form what avenue is open to these people in the future.

Trainees

Unfortunately due to time constraints we have not been able to adequately investigate the Draft Bill for matters in relation to trainees. We note that there is a specific section for school based apprentices and trainees but are concerned at the impact of the removal of the State Award system on these disadvantaged workers. We also query the intersection of the draft legislation and the Tasmanian *Vocational Education and Training Act 1994.*

We are aware that in many instances young people are being underpaid as against the State National Training Wage (Tasmanian Private Sector) Award. Many young people relocate to larger towns and cities in order to gain employment, they therefore have costs in relation to household maintenance and transport associated with their employment. We believe that this group of young workers are already open to such exploitation that they should be identified as a separate group and extra mechanisms should be built into legislation to protect them.

We have dealt with a number of issues in relation to non-payment for off the job training etc for trainees on State Awards and AWAs. The Tasmanian Office of Post Compulsory Education and Training is the State bureaucracy responsible for oversight of traineeships and apprenticeships unfortunately there is no industrial

relations section in this office and whilst many trainees would look to this organization for support in times of difficulty the office seems to feel no responsibility in relation to Industrial Relations matters.

Impact of loss of State based wages system on small businesses and their employees.

Our experience tells us that most Tasmanian employers are small businesses and very few of these are corporations. We are confident that ABS figures would support this assertion. As such the current situation is that employers have free access to a State Award System which provides them with a process and structure within which they can manage their staffing requirements. Copies of relevant awards are available for around $40.00 per year from the Printing Authority of Tasmania and access is free via the internet. For a reasonable cost employers may choose to join the employer's union, the Tasmanian Chamber of Commerce and Industry and receive additional advice and assistance and representation.

The abolition of the current state award system will create a necessity for small employers to incur additional costs in time and money associated with buying in and/or gaining the necessary industrial relations expertise to allow them to manage their human resources within the system proposed by the Draft Bill.

We are a small business and will also find ourselves caught up in the proposed changes. Given that we are a government funded entity there is little capacity for us to work harder to increase our profits to provide the necessary funds to employ the necessary expertise on an ongoing basis. Most community organizations will face a similar scenario. Currently we have an employee with the necessary expertise but the continuation of funding for this programme is unknown at this stage.

Community Partners Programme

Currently the Centre receives funding for a part time advocate to assist workers in a disadvantaged bargaining position under the Community Partners Programme through the Office of the Employment Advocate. The Working Women's Centre in Hobart also receives some funding under this programme. These are the only services so funded in Tasmania.

Our Centre has taken the term "disadvantaged worker" to mean workers who are not members of unions nor members of the public sector and so the service is available free of charge to employees from a very diverse range of industries and employment situations. Currently we have no information in relation to the continuation of the programme. We are hoping that the funding provided under this programme could be increased to allow the service to be expanded. In the event the Draft Bill is accepted by Parliament we expect that the need for this service will increase exponentially.

However, if the programme is to continue we would seek a variation to the agreement which would allow us to act as bargaining agents for clients. Currently this is not allowed under the programme and leaves employees who are not union members with no other option than paying for private legal advice and given a shortage of solicitors

in Tasmania it is often not possible to receive this advice within the timeframe provided in accepting an AWA.

For and on behalf of the
Launceston Community Legal Centre INC.
Debbie Butler
Co-Manager
68 York Street
or
PO Box 1582
LAUNCESTON 7250.