

ICLC

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Senate Employment, Workplace Relations and Education
Legislation Committee
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Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

Inner City Legal Centre (ICLC) is a community legal centre that has been serving the inner city areas of Sydney since 1980. We also provide a statewide gay and lesbian legal advice service, and a statewide service for transgender people. Employment law has been a major area of work for this Centre for many years, and in 1997 we published "An Employees Guide to Unfair Dismissal".

ICLC endorses the submissions made to this inquiry by the Combined Community Legal Centres Group (NSW) and the National Association of Community Legal Centres. We submit that an unreasonably short time period has been provided to individuals and organizations to read and absorb the Bill and Explanatory Memorandum and prepare submissions. This submission is therefore brief, and touches upon issues that most affect our clients.

1. Gay and lesbian employees

The Bill maintains the definition of de facto spouse that is currently in the *Workplace Relations Act 1996*. This definition only includes partners of the opposite sex to an employee. In contrast, the NSW *Industrial Relations Act 1996* defines de facto spouse to include partners of the same sex as the employee. Therefore, gay men and lesbians who are currently covered under the NSW legislation but may in the future be covered by the Federal legislation will be disadvantaged.

In the Bill, the entitlement to carer's leave and compassionate leave is given by reference to "a member of the employee's immediate family or a member of the employee's household." "Immediate family" is defined to include de facto partners of the opposite sex, and the child, parent, grandparent, grandchild or sibling of a de facto partner of the opposite sex. While a same sex partner may usually be a member of the household of an employee, the extended family is not covered in the same way as for opposite sex de facto couples. There may also be circumstances where same sex de facto partners may not be living in the same household, such as where a partner may be in a nursing home, or temporarily in a caring role in another household.

We submit that employees should not be discriminated against in any way on the basis of their sexual preference and the gender of their partner, and that the Bill should include a definition of de facto spouse that includes same sex couples.

The Bill also maintains similar provisions to the current *Workplace Relations Act 1996* in relation to parental leave. At Inner City Legal Centre we have many clients who are lesbian couples, where one or both women conceive a child or children using donor sperm, and raise these children as a couple. While maternity leave is available to women giving birth, only male partners of a woman giving birth have an entitlement to parental leave. If a woman giving birth has a female partner, that partner has no such entitlement.

We submit that the provisions for parental leave in the Bill should be gender neutral, and that the reference to “paternity leave” should be deleted and replaced with “parental leave.”

2. Transgender Employees

ICLC has many clients who are transsexual, also referred to as transgender. The experience of being transsexual is an incredibly difficult one. The incidence of violence and discrimination against transsexuals is very high, and transsexual people can find it very difficult to find and maintain employment, particularly at the time of transition from one gender to another.

We are very concerned about the impact of the changes to unfair dismissal provisions in the Bill. Transsexual employees who are unfairly dismissed and are employed by an employer with fewer than one hundred employees will have no remedy. S170CK (2)(f) of the *Workplace Relations Act 1996* covers unlawful termination of employment where the reason for the termination is the employee’s race, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction, or social origin. However, none of these categories offers protection to a person who is dismissed because of their transgender status. Transsexuality is not related to sexual preference.

3. Demand for legal advice

Employment law is already the legal area of highest demand for this Centre. We anticipate that the new legislation will increase that demand substantially. We expect that employees will be seeking advice in relation to Australian Workplace Agreements they are being asked to sign. Many of our clients have low levels of education and literacy, have a mental illness, or do not speak English fluently. They are not in a position to bargain effectively for themselves, to pay for advice or to engage a representative. We have little capacity to meet a significant increase in demand for employment law advice.

Yours faithfully
INNER CITY LEGAL CENTRE

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