

Submission

to

Senate Employment, Workplace Relations and Education
Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

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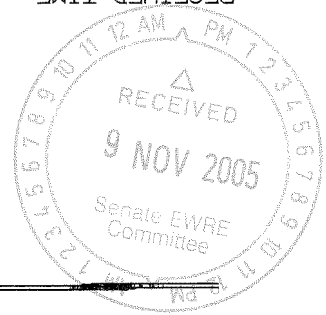
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FACSIMILE TRANSMITTAL SHEET

TO: Secretary	FROM: Shane Prince
COMPANY/FIRM: Senate Employment Workplace Relations and Education Committee	DATE: 10 November 2005
FAX NUMBER: +61 2 6277 5706	TOTAL NO. OF PAGES INCLUDING COVER: 4
RE: Workplace Relations Amendment (Work Choices) Bill 2005	

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Dear Secretary,

Please find attached my submission to the Committee.

I would be extremely grateful if you could exercise your discretion to accept the submission out of time. Due to other work commitments yesterday and an error in communication within my chambers I was unable to forward the submission yesterday.

The submission endeavours to provide assistance to the committee and to draw attention to what I hope would be a technical and non-partisan matter involving a collateral consequence of one section of the Bill.

If you require any further information or I can be of assistance please do not hesitate to contact me on +61292231522.

Kind Regards



Shane Prince

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1. I am a barrister practicing in the area of Industrial Law and have had over ten years experience in this field as a lawyer both in Australia and the UK. I have acted for large multinational corporations, government and individuals. These submissions are made in my personal capacity as a citizen only and are not intended to reflect the views of any of my clients, past or present.
 2. These submissions concern only a limited aspect of the Workplace Relations Amendment (Work Choices) Bill 2005. Due to the time restraints and the volume of the legislation, as well as the lack of any readily available hardcopies, it has been impossible to provide more broad ranging submissions although the Bill's problems seem manifold.
 3. These submissions do not seek to address the ideological or partisan debate nor do they deal with the serious constitutional issues surrounding this legislation.
 4. I wish to draw to the attention of the Committee a very serious, and I hope unintended, consequence of clause 7C (d) of the Bill.
 5. The clause, on my view, is intended to have the effect via s 109 of the Constitution of invalidating s 106 of the Industrial Relations Act (NSW) which allows the Industrial Relations Commission in Court Session to void or vary any contract whereby work is performed in an industry if it is unfair.
 6. I make no comment on the policy of such an approach, however my concern is with the implementation of that policy in respect of cases already commenced in the Commission in Court Session.
 7. It seems that if s 7C (d) is valid, it will preclude the exercise of any power by the Commission under s 106 immediately and so any existing case will be frozen. The Commission will be unable to make any orders.
 8. This means that people in the middle of lengthy and costly litigation will immediately have their rights removed without any recourse.
 9. The practical effects will be devastating on individuals, many of whom are middle managers and those described in the media as "battlers" and leave them with devastating legal costs.
 10. Whatever one may think of the policy of denying the remedy of fairness to employees, it is beyond reproach that it should be done in a way which annihilates people who have invested (in many cases) years of stress and money in pursuing an available and legitimate legal remedy. In many case the lives of families and loved ones are put on hold pending the outcome of the litigation and properties are mortgaged to meet legal costs.
 11. Those people who are engaged in proceedings have done nothing wrong. They proceeded on the law as it stood. They must have had reasonable prospects to commence the proceedings under the Legal Profession Act.

Through no fault of their own, and without ever being given the choice, they will be exposed to serious harm through this legislation.

12. My suggestion is that the Bill be amended to include a section to the effect that nothing in s7C(d) is to be taken to exclude the operation of such legislation in respect of claims that were filed immediately prior to the commencement of the Act.

13. Such an amendment would allow people to make an informed choice in respect of future conduct and would assist those who have relied on the current form of the law.



Shane Prince
Chambers