

Submission

to

Senate Employment, Workplace Relations and Education
Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

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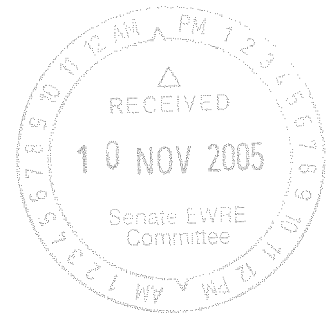
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**Senate Employment, Workplace Relations and
Education Legislation Committee**

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

**Submission of
The Recruitment and Consulting Services Association**

November 2005



The Recruitment and Consulting Services Association

The Recruitment and Consulting Services Association Ltd ('RCSA') is the peak body of the employment services industry in Australia and New Zealand.

Formed in 1996 the RCSA boasts a national membership of 3,000, all of which are drawn from a diverse range of organisations and individuals including small owner-operator businesses, listed and non-listed Australian companies and Australia's large multinational corporations.

Members of the RCSA provide an extensive range of employment services including:

- » On-hired employee services;
- » Contracting services (including on-hired independent contractors and direct contracting);
- » Recruitment services (including *Job Network* services); and
- » Employment consulting services (including workplace relations and OHS consulting services).

The RCSA maintains its head office in Melbourne and six Secretariats located in Victoria, New South Wales, South Australia, Western Australia, Queensland and New Zealand. The current Chief Executive Officer of the RCSA is Mrs Julie Mills and the current President is Mr John Plummer (Executive Director, Chandler Macleod Group).

The RCSA is instrumental in setting standards in the employment services industry. Such standards are set and maintained in relation to individual and corporate member professional development, education, training, industry compliance, industry performance and the establishment and maintenance of sustainable and effective legislative and regulatory regimes relevant to the industry.

The RCSA Australia/New Zealand boasts a very effective member committee structure that review and contribute to the establishment of professional conduct and equitable outcomes for corporate members, individual members, employees of corporate members (direct and on-hired) and independent contractors.

Committees include the Australia/New Zealand Workplace Relations Committee, Australia/New Zealand Workers Compensation and Occupational Health and Safety Committee, Australia New Zealand Insurance Committee, Australia New Zealand Education and Training Committee and the Australia New Zealand Taxation Committee. This committee structure, which is supported by State based committees provides the RCSA with an unparalleled capacity to respond to discussions of this nature in a manner that is accurate, effective and insightful.

Introduction

The Recruitment and Consulting Services Association ('RCSA') represents Australia's new workforce, a workforce where traditional direct hire employment makes way for third party employment services. The significant growth of third party employment services over the past ten years has primarily taken place in response to increasing international and domestic competition. Ever increasing international competition is a challenge that requires sensible yet sustained innovation from government, business and the Australian workforce. RCSA support the government's endeavours to establish the foundations for sustained economic development to support future generations and believes that workplace relations reform is one pillar upon which Australia's sustainable future relies.

RCSA have been strong advocates of a move to a unitary system of industrial relations within Australia given the propensity for members to operate across state borders and in multiple industries. The existence of multiple workplace relations systems within Australia has caused ongoing frustration for a membership that maintains one of Australia's most diverse workforces. RCSA also support the introduction of legislation that seeks to protect the right of business and government to utilise on-hired employee services without restriction from third parties. The imposition of restrictions on the use of this now vital element of the Australian business landscape only seeks to inhibit the capacity of business to compete in the global market.

RCSA remains mindful that the government has prepared a bill that seeks to represent Australia's future interests and that the ground work for ongoing prosperity must be formulated before the onset of market influences that may undermine the economic sustainability that has inspired much success in recent times.

RCSA see that we as an industry have an ongoing responsibility to work closely with our employees as principal assets, clients as our future and other stakeholders as our partners to ensure that third party employment services achieve ongoing sustainability through fairness and innovation. We understand the importance of establishing employment relationships and systems of work that enhance the lives of our employees and the businesses of our clients and that economic prosperity is achieved through respect for all labour market participants.

This submission only seeks to address those aspects of the Bill which we believe may benefit from closer scrutiny in relation to the employment services of our members. We remain mindful of the desire of the committee not to address issues that have previously been scrutinised before previous workplace relations inquiries.

RCSA Submission in Response to the Bill

Principal Objects

1. RCSA supports the revision of the principal objects of the legislation to provide greater attention to Australia's flexible workforce. RCSA is the peak industry body representing on-hired employee services in Australia and advocates improved recognition and understanding of the need for flexible employment solutions to meet the changing needs of business and government.
2. RCSA supports the establishment and maintenance of a single system of workplace relations within Australia. RCSA believes the establishment of a single system of workplace relations will allow members of the association to focus more upon other compliance activities such as occupational health and safety and equal employment opportunity by reducing the duplication of industrial instruments across industry and occupation. RCSA members maintain a high level of diversity amongst their respective workforces and the move toward a unitary system of workplace relations management will improve compliance and simplify candidate and worker understanding of their respective entitlements.
3. RCSA supports improved means of investigation and enforcement to ensure compliance with newly established minimum entitlements under the Bill. RCSA supports the right and capacity of direct hire and on hired employees to address grievances through a fully funded government body.
4. RCSA supports the focus upon the balancing of work and family through the establishment of more flexible work arrangements including the utilisation of on-hired employment to enter and re-enter the workforce whilst maintaining a capacity to respect work/life balance.

The Australian Fair Pay Commission and Standard

1. RCSA submits that it is essential that the office of the Australian Fair Pay Commission retains integrity through independence from the government of the day. The success of the Australian Fair Pay Commission now and into the future will be determined by its capacity to make decisions without influence.
2. RCSA support the introduction of Fair Pay Standards to ensure a minimum entitlement for employees working under the broader Federal system of workplace relations. RCSA recognise the importance of assisting members to enter into agreements with direct hire and on-hired employees that provide terms and conditions of employment that

complement the flexible work arrangements required of the contemporary worker wishing to maintain diversity and life balance in their employment arrangements. RCSA further recognise that the Australian Fair Pay Standard is a minimum and that effective workplace relations will require more comprehensive terms and conditions of employment to cater for the personal and enterprise needs of the employment service provider in a way that also caters for client operations.

3. RCSA support the introduction of unpaid carer's leave entitlements for casual employees. For some time now RCSA has recognised the importance of recognising the need to cater for the rights of all employees in relation to family and related responsibilities. The introduction of an entitlement to unpaid carer's leave will further facilitate the sustainability of casual employment as an option for employees wishing to maintain work/life balance and flexibility.
4. RCSA is concerned that the casual loading standard provided at section 90H requires a minimum casual loading which may fail to take into account the provision of additional annual leave entitlements for casual employees under an award where existing casual loadings are below 20% and the provision of such annual leave component takes the total loading beyond 20%.
5. RCSA support the introduction of parental leave entitlements for casual employees with 12 months regular and ongoing employment and believe such provisions provide for the sustainability of casual employment especially as it may relate to on-hired employment through an on-hired employee service provider. However, RCSA is concerned that members engaging on-hired employees may be unable to guarantee a return to the same position and client assignment upon return from such leave. RCSA seeks that the provisions of proposed sub-sections 94R(5), 94ZH(3) and 94ZZ(3) relating to inability of an employer to return a returning employee to the position held immediately prior to the taking of leave recognises the incapacity of on-hired employee service providers to direct a client to take a returning employee on assignment as an on-hired employee pursuant to sub-sections 94(5)(a) and (b), 94ZH(3)(a) and (b) and 94ZZ(3)(a) and (b).
6. We maintain a range of queries in relation to minimum standards and the award review which include the following:
 - Will the AFPC consult with employer associations and interested parties with respect to the setting of the Award classification wages, the Federal Minimum Wage (FMW), the minimum wage for juniors and in the setting of the default casual rate?

- What criteria will the AFPC and the Awards Review Taskforce use to assess the default casual rate (proposed at 20%)? Will the “Standard” be adjusted or reviewed at appropriate intervals?
- Will the AFPC only set minimum casual loadings, or will the default casual loading basically apply across all Awards.
- With the removal of the no-disadvantage test, how will the default casual loadings take into consideration some over Award allowances and leave accruals in addition to the existing casual rate?
- Regarding organisations that do not enter into AWA’s or certified agreements and are not constitutional corporations following the ending of the transitional period, will they be covered by the new minimum Federal Award provision or refer back to the relevant state based Awards?

Workplace Agreements and Awards

1. RCSA supports the introduction of a simplified approach to agreement making whereby agreements take effect from lodgment rather than approval by the Office of the Employment Advocate. However RCSA submits that it is imperative that the Office of the Employment Advocate is fully funded and has the capacity to efficiently handle its new agreement making responsibilities.
2. RCSA is concerned that the maximum term of Union or Employer greenfields agreements at 12 months on the basis that 12 months is too restrictive and fails to cater for the particular requirements of on-hired employee service providers that in certain circumstances may require an agreement for new client arrangements over an extended period.
3. RCSA strongly support the introduction of legislation that prohibits the lodgment of agreements or operation of award clauses which seek to place restriction on the engagement of on-hired employees and contractors.

Industrial Action

1. RCSA supports the restrictions on pattern bargaining introduced by the proposed legislation. However, we seek clarification that circumstances where an on-hired employee service provider enters into an agreement that reflects the terms and conditions of principal terms of a client agreement will not be considered ‘pattern bargaining’.

Transition to Unitary System

1. RCSA strongly supports the move toward a unitary system of workplace relations in Australia on the basis that we believe one system of workplace relations within Australia will improve the capacity of our members to comply with the relevant award or legislative provisions relating to unfair dismissal and unlawful termination.