

# Submission

to

Senate Employment, Workplace Relations and Education  
Legislation Committee

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

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## 1. ABOUT THE SUBMITTER

The Christian Science Federal Representative for Australia provides accurate information to the public about the healing practice known as Christian Science and its discoverer, Mary Baker Eddy.<sup>1</sup> The Federal Representative is supported by various state Committees on Publication who are appointed by local Christian Science branch churches in those states. (Christian Science is not Scientology). I work closely with the Manager of Committees on Publication of The First Church of Christ, Scientist in Boston, Massachusetts and in conjunction with other Committees on Publication worldwide. In addition to providing accurate information about Christian Science, Committees on Publication also identify with and support the growing public interest in spirituality and promote the principle of religious rights for all.

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<sup>1</sup> Mary Baker Eddy spent many years searching for practical, permanent solutions to the many challenges in her life. She discovered a Bible-based method of spiritual healing (which she named Christian Science) that enabled her to gain control of her life and triumph over obstacles such as divorce, homelessness, family rejection, and chronic poor health. Eddy devoted her life to sharing with others this spiritual system of healing. In addition to healing many, teaching others to heal, and giving public talks, she wrote and published many books and articles explaining these revolutionary ideas. See [www.marybakereddylibrary.org](http://www.marybakereddylibrary.org) In her late eighties, she established *The Christian Science Monitor*, a well-respected international newspaper. [www.csmonitor.com](http://www.csmonitor.com) Eddy also founded the Church of Christ Scientist. [www.churchofchristscientist.org](http://www.churchofchristscientist.org)

## 2. EXECUTIVE SUMMARY

We appreciate this opportunity to make a brief but important submission to the Australian Senate Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005 (the Bill).

**Clarification and/or amendment is sought to Subdivision D 93N so as to allow officers and employees with religious objections to medical examinations because they choose to rely on a religious non-medical method of healing to furnish other authoritative proof such as a statutory declaration from a Christian Science practitioner, of their inability to work due to illness, so as to claim paid sick leave entitlements.**

**The additional need for a similar provision under Subdivision D sections 93N, and 93 P(5) to cover this situation concerning carer's leave entitlements is also addressed.**

While this office would prefer that the provision providing that an employer, may seek a medical certificate or statutory declaration for even one day's sick leave from an employee, not be included in the new Bill, **our broader concern is for a provision to be included that would allow a statutory declaration from a Christian Science practitioner, (in lieu of a medical certificate), to be accepted for all normal absence due to illness, or other conditions which prevent the person from working.**

Our submission, therefore, covers omissions in current provisions in the following sections of the Bill, and recommends language appropriate to amend these omissions:

**Subdivision D -----Notice and evidence requirements:**

**Personal/carers' leave**

**93N Sick leave-medical certificate**

**93O Carer's leave notice**

**93P(5) Carer's leave ---documentary evidence**

**(5) ---Salutory declaration**

## 3. CORE ISSUES

- **Many people in the community take a more holistic approach to the treatment of illness and other personal conditions that includes treatment of illness and related conditions through a spiritual approach to their health. This office is able to supply a sampling of worldwide research indicating this growing usage, should the Senate Committee require it.**

- Christian Science treatment has been a choice for a small but substantial number of families in the Australian community for more than 100 years, and for a similar period in many other countries. We cite examples of legislative provisions accommodating this religious non-medical approach to health care in jurisdictions in other parts of the world in relation to the acceptance of a statutory declaration from a Christian Science practitioner when a medical certificate is required for sick leave entitlements.<sup>2</sup>
- A person suffering from illness, or other conditions that prevent them working should have a right to access a Christian Science practitioner,<sup>3</sup> without discrimination, in lieu of a medical practitioner, so as to utilize this spiritual approach as their choice of treatment for illness or other conditions preventing them working.
- New national workplace legislation should now reflect this community expectation through provisions within this Bill to substantiate personal sick leave and carer's leave entitlements for those who choose treatment through prayer instead of medical treatment.
- There are numerous examples of individuals having to negotiate this option in the workplace - one that is well documented and known to this office. This occurred in NSW in 1979 in a Case concerning an employee of the NSW Public Service who was a Christian Scientist, and which was later recorded in a NSW Anti-Discrimination Board Report<sup>4</sup>, resulting in a recommendation made by that Board in 1984 to include such a provision as we describe in the NSW Public Service Board Regulations.
- To date no such provisions have been accommodated in either State or Federal legislation.

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<sup>2</sup> See Section 7. in this submission

<sup>3</sup>For information about a Christian Science practitioner (See <http://www.tfccs.com/aboutchristianscience/practitioners.jhtml>).

<sup>4</sup> NSW Anti-Discrimination Board: *Discrimination and Religious Conviction 1984 - "A report of the Anti-Discrimination Board in accordance with Section 118 (a) of the Anti-Discrimination Act 1997" see Case 15. p.380-384 [electronic version not located]*

#### 4. PROPOSED AMENDMENT LANGUAGE

We recommend new subsection 93N(6) to read:

93N Sick leave ----medical certificate  
After 93N (5)

ADD

New subsection (6) to read:-

(6) Under this section, officers and employees with religious objections to medical examinations and who choose to rely on spiritual treatment through prayer, in lieu of medical treatment, may furnish a Statutory Declaration from a Christian Science practitioner, listed in *The Christian Science Journal*, who is providing them with Christian Science treatment, as authoritative proof of their inability to work, in lieu of a medical certificate.

We recommend new subsection 93P(7) so as to read:

93P Carer's leave ----documentary evidence

Add new subsection 93P (7) so as to read:

93P (7) Under this section, officers and employees requiring leave during the period to provide care or support to a member of an employee's immediate family who has a religious objection to medical examinations and who chooses to rely on spiritual treatment through prayer may furnish a Statutory Declaration from a Christian Science practitioner, listed in *The Christian Science Journal*, who is providing Christian Science treatment to the family member, as authoritative proof of their inability to work, in lieu of a medical certificate.

#### 6. NSW ANTI-DISCRIMINATION 1984 RECOMMENDATION REPORT - AN EXAMPLE FOR THIS PROVISION

This office is aware of a process initiated by the Christian Science Committee on Publication for NSW (one of our State counterparts) in 1978 through a submission made to the NSW Anti-Discrimination Board about discrimination faced by those who were Christian Scientists in the Public Service who wished to claim sick leave entitlements (or for workers'

compensation). Earlier submissions had also been made over the years by that office to the Federal Public Service Board – though none were successful in achieving accommodations for religious objections to medical examinations. A summary of the context of the 1978 submission is included in the previously mentioned 1984 NSW Anti-Discrimination Board Report.<sup>5</sup>

That Report stated in part:

“7.85 The Board is of the view that religious practice forms part of religious belief as a whole. Christian Science practitioners provide a religious healing rather than a medical healing service to their believers. The true believer cannot in all conscience receive both medical and Christian Science treatment at the same time..... Their practitioners do not claim to be medical practitioners and are advised to be careful to avoid situations where they may be so confused.

“7.86 A Christian Science practitioner or [Christian Science] nurse may report what is evident to the eye or what the patient has stated to be the condition without this being considered a diagnosis. They are prepared to sign carefully worded statements of disability that do not offend their religious tenets, such as the following:

*“I hereby certify that.....was under my professional care from .....to....due to physical illness. From what I was told, and from my lay observations I considered it inadvisable for him/her to report for work or attend his/her regular duties during this period.”*

A specific case is cited in the Report indicating that the NSW Public Service Board had made at least one exception to its Regulations where “a woman was granted six weeks paid sick leave without having to produce a medical certificate. A senior officer of her department requested sick leave for her, and the Public Service Board asked her Christian Science practitioner to support her claim with a statutory declaration. The leave was granted.”

It is noted too in this case, that the Public Service Board stated that further applications would “have to be considered on its merits”. **However, the 1984 ADB Report considered that the Public Service Board regulations should be amended to make them flexible enough to accommodate religious objections, while at the same time ensuring the genuineness of the claim.”**

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<sup>5</sup> See footnote 4.

**Recommendation 27 in that Report stated:**

The Anti-Discrimination Board recommended in this 1984 Report that:

*“The Public Service Regulation concerning sick leave should be amended to allow officers and employees with religious objections to medical examinations to furnish some other authoritative proof of their inability to work”.*

From information supplied to this office by other Christian Scientists who have had to negotiate applications to both public sector bodies as well as to private employers, it is evident that some have been successfully able to utilize a “Sick Leave Form’ signed by a Christian Science practitioner in obtaining paid sick leave entitlements. However this has not always been the case as there is no provision in legislation at either State or Federal level to ensure this is available to all who seek the provision.

Considering this issue anew in the 21<sup>st</sup> century is essential so as to readdress this long-standing oversight considering the now more widely available anti-discrimination law in place in Australia. There is an opportunity now provided in the new *Workplace Relations Amendment (Work Choices) Bill* to rectify this area of religious discrimination in the workplace and insert the clauses we recommend into the Bill - or other appropriate language that satisfies the requirement.

**5. SAMPLING OF AUSTRALIAN RESEARCH RELATED TO BENEFITS OF SPIRITUALITY TO HEALTH OUTCOMES**

A sampling of research is available from this office if required, which indicates spirituality offers improved outcomes for consumers suffering from illnesses and many other conditions or disorders. This more “holistic approach to improving mental health and well-being” is also referenced in connection with mental health illnesses, and recommendations on this are given in the *National Mental Health Plan 2003 to 2008: Australian Health Ministers July 2003*.<sup>6</sup>

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<sup>6</sup> See <http://www.dh.sa.gov.au/mental-health-unit/documents/mhplan.pdf>.

**7. SAMPLING OF LEGISLATIVE PROVISIONS FROM OTHER JURISDICTIONS ACCOMMODATING SICK LEAVE CERTIFICATES BY CHRISTIAN SCIENCE PRACTITIONERS**

**CONNECTICUT GENERAL STATUTES ANNOTATED**

**TITLE 31. LABOR**

**CHAPTER 557. EMPLOYMENT REGULATION**

**PART II. PROTECTION OF EMPLOYEES**

§ 31-51kk. Family and medical leave: Definitions.

“As used in sections 31-51kk to 31-51qq, inclusive: . . . (6) ‘Health care provider’ means . . . (D) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; . . .”

**Conn. Gen. Stat. Ann. § 31-51kk(6)(D) (2003).**

**LEXIS LAW PUBLISHING’S CODE OF FEDERAL REGULATIONS**

**TITLE 5 -- ADMINISTRATIVE PERSONNEL**

**CHAPTER I -- OFFICE OF PERSONNEL MANAGEMENT**

**SUBCHAPTER B -- CIVIL SERVICE REGULATIONS**

**PART 630 -- ABSENCE AND LEAVE**

**SUBPART B -- DEFINITIONS AND GENERAL PROVISIONS FOR ANNUAL AND SICK LEAVE**

§ 630.201. Definitions.

“ . . . (b) In subparts B through G of this part: . . . Medical certificate means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment. . . .”

**5 C.F.R. § 630.201(b).**

**LEXIS PUBLISHING’S CODE OF FEDERAL REGULATIONS**

**TITLE 20 -- EMPLOYEES’ BENEFITS**

**CHAPTER II -- RAILROAD RETIREMENT BOARD**

**SUBCHAPTER C -- REGULATIONS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT**

**PART 335 -- SICKNESS BENEFITS**

§ 335.3 Execution of statement of sickness and supplemental doctor’s statement.

“(a) Who may execute. A statement of sickness and any required supplemental doctor’s statement shall be executed by any of the following individuals: . . . (9) An accredited Christian Science Practitioner; . . .”

**20 C.F.R. § 335.3(a)(9).**

**ARKANSAS CODE OF 1987 ANNOTATED**

**TITLE 21. PUBLIC OFFICERS AND EMPLOYEES**

**CHAPTER 4. ATTENDANCE AND LEAVE**

**SUBCHAPTER 2. UNIFORM ATTENDANCE AND LEAVE POLICY ACT**

§ 21-4-207. Sick leave -- Accrual and use.

“(a) . . . (3) (A) (i) An employee shall be required to furnish a certificate from an attending physician for five (5) or more consecutive days of sick leave. . . . (B) A certificate from a Christian Science practitioner listed in The Christian Science Journal may be submitted in lieu of a physician’s certificate.”

**Ark. Code Ann. § 21-4-207(a)(3) (2003).**



**DELAWARE CODE ANNOTATED  
TITLE 9. COUNTIES  
PART III. KENT COUNTY  
CHAPTER 43. PENSION FOR COUNTY EMPLOYEES**

§ 4302. Definitions.

“ . . . (c) A covered employee who shall have been employed by Kent County for at least 6 months shall be considered totally disabled if he is under the regular care of a licensed physician or Christian Science Practitioner. . . .”

**Del. Code Ann. tit. 9, § 4302(c) (2003).**

**ANNOTATED CODE OF MARYLAND  
STATE PERSONNEL AND PENSIONS  
DIVISION I. STATE PERSONNEL  
TITLE 9. LEAVE TIME AND HOLIDAYS  
SUBTITLE 5. SICK LEAVE**

§ 9-504. Certificate of illness.

“(a) In general. -- An employee who uses sick leave for 5 or more consecutive workdays for personal illness or disability or the illness or disability of a member of the employee’s immediate family may not receive payment under this subtitle unless the employee gives the employee’s immediate supervisor an original certificate of illness or disability.

(b) Signatures. -- The certificate required under subsection (a) of this section shall be signed by one of the following: . . . (3) an accredited Christian Science practitioner.”

**Md. Code Ann., State Pers. & Pens. § 9-504(a), (b)(3) (2002).**

**WISCONSIN STATUTES  
REGULATION OF INDUSTRY  
CHAPTER 103. EMPLOYMENT REGULATIONS**

§ 103.10. Family or medical leave.

“(1) DEFINITIONS. In this section: . . . 2. (am) ‘Christian Science practitioner’ means a Christian Science practitioner residing in this state who is listed as a practitioner in the Christian Science journal. . . .

(7) Certification. (a) If an employee requests family leave for a reason described in sub. (3)(b)3. or requests medical leave, the employer may require the employee to provide certification, as described in par. (b), issued by the health care provider or Christian Science practitioner of the child, spouse, parent or employee, whichever is appropriate.

(b) No employer may require certification stating more than the following: 1. That the child, spouse, parent or employee has a serious health condition.

2. The date the serious health condition commenced and its probable duration. 3. Within the knowledge of the health care provider or Christian Science practitioner, the medical facts regarding the serious health condition. 4. If the employee requests medical leave, an explanation of the extent to which the employee is unable to perform his or her employment duties. . . .”

**Wis. Stat. § 103.10(2)(am), (7)(a), (7)(b) (2003).**

**DEERING’S CALIFORNIA CODES ANNOTATED  
UNEMPLOYMENT INSURANCE CODE  
DIVISION 1. Unemployment and Disability Compensation  
PART 2. Disability Compensation  
CHAPTER 2. Disability Benefits**

**ARTICLE 4. Filing, Determination and Payment of Disability Benefit Claims**

§ 2709. When medical examination not required; Certificate required in lieu thereof.

“If any individual in good faith adheres to the teachings of any bona fide church, sect, denomination or organization and in accordance with its principles depends for healing entirely upon prayer or spiritual means, no medical examination shall be required, but in lieu thereof the director may accept the certificate of a duly authorized and accredited practitioner of that bona fide church, sect, denomination or organization as to the disability of the

claimant, or the serious health condition of the family member that warrants the care of the individual, for purposes of chapter 7 (commencing with section 3300) of part 2, and the estimated duration of such disability, and no authorized regulation prescribing the manner of proof of illness, injury, or serious health condition shall discriminate against that individual.”  
**Cal. Unemp. Ins. Code § 2709 (2004).**

**MICHIE’S HAWAII REVISED STATUTES ANNOTATE**

**DIVISION 1. GOVERNMENT**

**TITLE 21. LABOR AND INDUSTRIAL RELATIONS**

**CHAPTER 392. TEMPORARY DISABILITY INSURANCE**

**PART II. TEMPORARY DISABILITY BENEFITS**

§ 392-26. Care by physician or equivalent required.

“ . . . (b) This section shall not apply to an individual who, pursuant to the teachings, faith, or belief of any group, depends for healing upon prayer or other spiritual means. In that case the disability, the probable duration thereof; and any other pertinent facts required to be certified by regulation of the director shall be certified, in the form and manner specified by the regulation, by a duly authorized or accredited practitioner of such group.

(c) The proof of disability duly certified by . . . an authorized or accredited practitioner of any group which depends for healing upon prayer or other spiritual means shall be submitted by such certifying person to the disabled employee within seven working days after the date on which the employee was examined and found disabled. If the certifying person fails to submit the required proof within seven working days, the director, upon notification by the insurer, may levy a penalty of \$25 for each delinquent certification where the certifying person fails to show good cause for the person’s failure to file on time.”

**HRS § 392-26(b), (c) (2003).**

**TENNESSEE CODE ANNOTATED**

**TITLE 8. PUBLIC OFFICERS AND EMPLOYEES**

**CHAPTER 50. MISCELLANEOUS PROVISIONS**

**PART 8. LEAVE FOR STATE EMPLOYEES**

§ 8-50-802. Sick leave.

“(a) . . . (5) . . . The appointing authority may not deny sick leave to any employee who furnishes a statement of a licensed physician or accredited Christian Science practitioner in support of the reason for the absence. However, the appointing authority may require additional documentation if, upon further investigation, there is substantial evidence of sick leave abuse by the employee.”

**Tenn. Code Ann. § 8-50-802(a)(5) (2003).**

**ILLINOIS ADMINISTRATIVE CODE**

**TITLE 80. PUBLIC OFFICIALS AND EMPLOYEES**

**SUBTITLE B. PERSONNEL RULES, PAY PLANS, AND POSITION CLASSIFICATIONS**

**CHAPTER I. DEPARTMENT OF CENTRAL MANAGEMENT SERVICES**

**PART 303. CONDITIONS OF EMPLOYMENT**

**SUBPART B. LEAVE OF ABSENCE**

§ 303.145. Disability Leave.

“b. . . . 4) During a disability leave, the disabled employee shall provide written verification by a person licensed under the Medical Practices Act of 1987 [225 ILCS 60] or under similar laws of Illinois or of other states or countries or by an individual authorized by a recognized religious denomination to treat by prayer or spiritual means; such verification shall show the diagnosis, prognosis and expected duration of the disability; such verification shall be made no less often than every 30 days during a period of disability, unless the nature of the disability precludes the need for such frequency of verification; . . . .”

**Ill. Adm. Code tit. 80, § 303.145(b)(4) (2003).**

## 8. SUMMARY

### WE RECOMMEND THEREFORE:

- That the religious rights guaranteed all Australian citizens in s.116 of the Australian Constitution be recognised in the Bill by additional clauses in Subdivision D, Section 93N, as proposed in this submission so as to provide that if an individual's choice of health care is treatment through prayer by a Christian Science practitioner, and their employer requests a medical certificate to certify unfitness to attend work, they may submit a statutory declaration from the Christian Science practitioner stating that the person is unfit for work due to an illness or other condition that prevents them from working, - in lieu of a medical certificate.
- That a similar provision be added to Subdivision D, Section 93P allowing those who are carer's for a close relative or family member to submit a statutory declaration from a Christian Science practitioner confirming the person being cared for is receiving spiritual treatment through prayer by a Christian Science practitioner.
- **Support for the right of self-determination:** We recommend that this approach support the right of self-determination in choice of health care for every Australian citizen. For a Christian Scientist therefore, recognition of the wishes of individuals who have chosen, and wish to continue to choose an alternative form of care rather than medical care, should be clearly defined in the proposed Bill.

A representative from this office would be most happy to discuss this proposal further with the Senate Committee, or to appear at a hearing.

We look forward to continue communications with the Senate Committee or the Minister's office, to establish appropriate arrangements to implement this proposed amendment.

**Please communicate directly with the undersigned - Margaret Clark on tel. (02) 9911 6651 (or mobile tel. 0414 869 535) for all matters related to this submission.**

Margaret Clark  
Submitted November 16, 2005