# Submission

to

Senate Employment, Workplace Relations and Education Legislation Committee

# Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

**Submission no:** 200

**Received:** 17/11/2005

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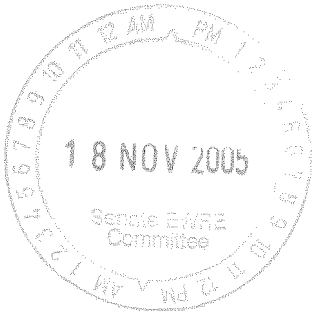


OEA INDUSTRY PARTNER

Monday, 14 November 2005

Committee Secretary
Senate Employment, Workplace Relations & Education Committee
Department of the Senate
Parliament House
Canberra ACT 2600

Dear Mr Secretary,

I am writing to you regarding the *Workplace Relations Amendment (WorkChoices) Bill 2005*.

IR Australia Pty Ltd is a workplace relations consultancy. We represent clients in the capacity of industrial agent under State and federal legislation. IR Australia is not a law firm and we do not perform legal work *per se*. However, we have provided services since 1999, when the firm was created by a merger between two earlier IR consultancies (Rochfort Associates Pty Ltd and First IR Pty Ltd) which each trace their roots in the industry back to 1984. We specialise in producing employment contracts and agreements.

IR Australia Pty Ltd is recognised as an Industry Partner with the Office of the Employment Advocate, is a registered Industrial Agent with the South Australian and Western Australian Industrial Relations Commissions, and is a member of the National Safety Council of Australia. We have obtained a solid reputation in the industry for providing top quality advice and advocacy to our clients.

The special role which we at IR Australia occupy as industrial advocates was outlined by Schmidt J in *Wolf, Michael v Armstrong Miller and McLaren Pty Limited* [2005] NSWIRComm 92.

For some time now, we have become concerned with the level of unscrupulous operators in our industry. This concern came to wider public attention in the recent matter of *Oram, Sandra v Derby Gem Pty Ltd* (2003) PR946375 where one such agent was found to have deliberately misled the Commission and caused his client's action to fail by his own malfeasance.

These shoddy practitioners reflect poorly upon the vast majority of excellent workplace relations consultants and agents, but there seems to be little which presently can be done to prevent or restrict such things from happening.

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Section 42(3) of the WorkChoices Bill does operate to require that agents particularly have to make a good case as to why they should be allowed to represent parties before the Commission. However, this is a restriction that therefore negatively affects all agents, not just the bad ones, and it also does nothing to address the practices of unscrupulous lawyers. Further, this clause does nothing to prevent the poor practitioners from engaging in other related activities, such as providing advice or drafting agreements. Further still, it does not address the role that employer associations play in providing advice and advocacy. Many of these associations currently provide advice, yet those providing the advice are often completely unqualified to do so, and as such, produce many of the same results for their clients as unscrupulous agents or lawyers may.

It is submitted that is a need for a more formal and prescriptive regulatory regime determining the activities of all industrial agents, associations and lawyers. It is not sufficient to simply make advocacy by all agents more restrictive.

By example, lawyers, doctors, dentists and accountants all have self-regulatory systems in place, prescribed by law, which are administered by their relevant professional bodies. These systems appear to work well.

A professional body for industrial agents currently exists – the Institute of Professional Industrial Advocates (IPIA). This body could be empowered to supervise the conduct of those practitioners in the industry so as to prevent much of the unscrupulous activity.

It would also be a step in the right direction if agents could apply to be registered or accredited, for instance by IPIA or the Office of the Employment Advocate, and that way carry some form of assurance to customers that they were reputable operators.

The Minister for Employment and Workplace Relations, the Hon. Kevin Andrews MP, has been on the public record many times with examples of ways in which the current s.170CE unfair dismissal laws have been abused. The Minister has cited examples of frivolous and vexatious claims by disgruntled former employees, which have been settled for commercial reasons by employers for as much as $30,000. Many of these frivolous claims are initiated by lawyers, and not just agents. Yet the WorkChoices Bill appears to do little to address this situation.

It is submitted that the Bill should be amended as follows:

(1) The AIRC should have the power to summarily dismiss vexatious and/or frivolous actions of any kind before the respondent starts to incur costs as a result of the action;

(2) Similar to the requirements in some civil jurisdictions, a claimant and/or their representative should be required to give an undertaking that they believe their action to have a reasonable chance of success; and

(3) Penalties should be provided for those who make frivolous claims and/or advise clients to make such claims.

We also note that the WorkChoices Bill will place a larger case workload upon the Federal Court in preference to the AIRC. This will dramatically increase the cost of disputation, as in many instances, the filing fees for the Federal Court can be as high as $1450, whereas they are typically just $50 in the Commission.

As such, it is submitted that the Bill should be amended so as to empower non-legal industrial advocates to appear in the Federal Court and other related fora where they currently may not.

This would have the effect of ensuring that the administration of justice via the *Workplace Relations Act* is still fair and obtainable for all Australians, and not just those who have the most money to spend.

Yours sincerely,

Peter Rochfort
Industrial Advocate