

Supplementary  
Submission  
No 41a

## INQUIRY INTO IMPACT OF COMMONWEALTH WORKCHOICES LEGISLATION

**Organisation:** Inner City Legal Centre  
**Name:** Ms Pat McDonough  
**Telephone:**  
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**Theme:**

**Summary**

## Legislative Council Inquiry - Impact of Commonwealth Workchoices Legislation

### CASE STUDIES

#### Case Study 1

A young woman had worked for a large airline as a member of the ground staff for 4 and one half months. Her employment was terminated 2 days after an incident with another staff member who had been making inappropriate comments to the female staff and the client told him to "get lost". The company refused to give her reasons for the termination except to say she was still on probation. Because the workchoices legislation now provides that a worker must complete a necessary period of 6 months employment, rather than the original 3 months qualifying period, our client had no remedy for unfair dismissal. Our client's dream was to work as a flight attendant.

#### Case Study 2

A young man who had worked for a computer service company for more than a year was sacked after taking 2 days off with a medical certificate. He had received a written warning one year earlier for taking one sick day without a medical certificate. However, because his former employer is a constitutional corporation with less than 100 employees the client has no remedy for unfair dismissal, instead his only remedy is unlawful termination application. If an application for unlawful termination does not settle at conciliation, then his only alternatives are to either file an application with the Federal Court which could mean a large bill for costs, if unsuccessful, or proceed no further.

#### Case Study 3

Client worked for a building company for 3 years. During that time he had one day off work. Client badly injured his knee (not a work injury) and needed surgery. He gave employer 3 months notice of surgery. Client was told by employer that coy would pay sick leave and annual leave but would not guarantee his job when he could return to work. Employer also insisted that a vehicle that the client used, paid for by the employer, but registered in client's name, be transferred into company name, when client refused, his employment

was immediately terminated. Employer is a constitutional corporation with less than 100 employees so no remedy for unfair dismissal as employment terminated on 9 May, 2006. Potential claim for unlawful termination on basis of injury/disability. However, if conciliation is unsuccessful, then only recourse is to file an application in the Federal Court.

#### Case Study 4

A 20 year old Client worked for a cinema for 6 years. Paid on a casual hourly rate but worked regular and systematic shifts. He received a phone call from employer advising him "not to come back". Because employer is a constitutional corporation with less than 100 employees, client has no remedy for unfair dismissal. Potential claim for long service leave.

#### Case Study 5

Client worked for a well known newspaper for 9 years. Use of the employer's equipment and services for his personal freelance work was a condition of employment. Client returned to work on 17 May after 6 weeks annual leave and his employment was terminated on the grounds of gross misconduct. The employer advised client that if he provided a written resignation, they would pay his long service leave and if he refused, the long service leave would not be paid. Client produced letter of appointment which stated he could use the company's equipment. Client also advised that other staff also had the same agreement as he did with the company to use the equipment. Client was told this information and the letter of appointment did not change anything and the only offer was resignation for long service leave. Client has no remedy for unfair dismissal as company has less than 100 employees. Potential claim for unlawful termination because of the lack of notice.

#### Case Study 6

Client worked for a vehicle paint supplier company for 8 months. Was told in November for the first time of a specific sales targets. Those targets were met. After a 3 hour meeting of staff in March in front of other staff, she was told "this is not going to work we are going to have to part company". Employer went on to say he would ring her on the following Monday. When employer did not ring client continued to work. Client worked until Wednesday when she received a phone call from employer saying "what the hell do you think you are playing at your employment was terminated on Friday". Because this unfair dismissal occurred prior to the commencement of workchoices, our client was successful in her unfair dismissal claim. A deed of release has been entered into.