

Submission
No 23

INQUIRY INTO IMPACT OF COMMONWEALTH WORKCHOICES LEGISLATION

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Theme:

Summary



**NSW Council for
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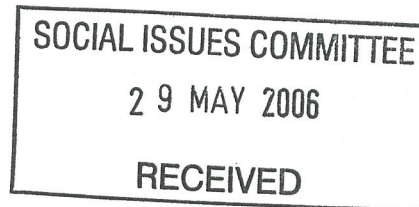
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25 May 2006

The Director
Standing Committee on Social Issues
Parliament House
Macquarie Street
Sydney NSW 2000



Dear Director,

Please find a submission to the Committee regarding the Inquiry into the impact of the Commonwealth WorkChoices legislation from the NSW Council for Intellectual Disability (NSW CID).

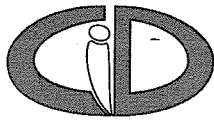
In particular we have commented on Terms of Reference (a) the ability of workers to genuinely bargain, focusing on groups such as women, youth and casual employees and the impact upon wages, conditions and security of employment

This Term of Reference is also relevant to people with intellectual disability who already experience unfair wage practices and who will be disadvantaged in the bargaining process.

If you require any additional information or have any queries regarding this submission please contact me on (02) 9211 1611 or lee-anne@nswcid.org.au

Yours Sincerely,

Lee-Anne Whitten
NSW Council for Intellectual Disabilit



NSW Council for Intellectual Disability (NSW CID)

**Response to Standing Committee on Social Issues
Inquiry into the impact of Commonwealth WorkChoices legislation
May 2006**

Background

NSW Council for Intellectual Disability (NSW CID) is the peak body representing the rights and interests of people with intellectual disability in NSW. Some of the roles we take on include systemic advocacy and information provision.

We welcome the opportunity to respond to the Committee's inquiry into the impact of Commonwealth WorkChoices legislation. In particular we would like to comment on Terms of Reference (a) 'the ability of workers to genuinely bargain, focusing on groups such as women, youth and casual employees and the impact upon wages, conditions and security of employment.' This is of relevance to people with intellectual disability as well, who are already subject to low wages and who will be disadvantaged in the negotiation/bargaining process.

Prior to defining any group of people it is important to note that no one individual is the same, but generally, in order for someone to be given a 'diagnosis' of intellectual disability, there are three core features they must have:

1. An IQ of less than 70-75
2. Difficulties with 'adaptive skills' – such as following and understanding directions, understanding abstract concepts, etc
3. The existence of the first two characteristics prior to the age of 18

Where possible all people with intellectual disability should be supported to work in open employment settings. There are of course exceptions, but a substantial number of people with intellectual disability are both able and willing to work, including people with very high support needs.

Workplace agreements

CID is concerned that people with intellectual disability will be disadvantaged under the new WorkChoices system, especially in regard to workplace agreements. The legislation is complex and difficult to understand. Its reliance upon bargaining to create workplace agreements based on the pretence that employer and employee will negotiate for a mutually beneficial outcome, assumes that everyone involved in the bargaining process will completely understand the legislation. This is not necessarily the case for a number of people, including people with intellectual disability. In a situation where one participant understands more than another, the equity of the process is substantially compromised.

People with intellectual disability will have difficulty understanding the legislation and any complex discussion during the negotiation process. People with intellectual disability can meaningfully participate in any activity, including workplace bargaining, if communication is appropriate and support is available. Appropriate support generally means having someone available with expert

skills in 'easy English' who can translate documents, explain the legislation and provide support during meetings. Whilst the WorkChoices legislation does allow for a representative to be present during bargaining, many people with intellectual disability may not even realize they have the right to bring someone along with them. Additionally finding someone with the necessary skills to understand the legislation and appropriately interpret it for them would be very difficult. Also, many people have little to no familial support and formal advocacy is hard to access.

Unfair dismissal laws

People with intellectual disability often work at a different productivity level to other employees. This should not impact upon their employment as they are also paid according to their level of productivity. However, if an employer wants to increase productivity it is likely an employee with intellectual disability would be seen to be negatively impacting the business. We are concerned that the '100 employee's unfair dismissal laws', which exempt businesses employing less than 100 people from unfair dismissal provisions, could impact in circumstances. This is of concern even though people with intellectual disability should be covered under unlawful termination provisions which don't allow termination based on many things, including intellectual disability. We are also concerned that if an employer does not want to employ a person with intellectual disability they will use the bargaining process to place unfair expectations and demands on the individual, possibly resulting in dismissal if these expectations cannot be agreed upon. In both cases difficulty understanding the legislation may mean that there is no consequence if employers do take advantage in such circumstances.

Business Services

CID is also concerned about workplace agreements in regard to Business Services. Business Services (formerly known as Sheltered Workshops) employ people with disability to do process work and they receive funding from the Australian Government to provide employment support. Of the 19,000 people employed in Business Services, 78% are people with intellectual disability. It is our belief that many Business Services could impose collective agreements upon their employees without ensuring a meaningful and transparent bargaining process, locking people into low wages, poor working conditions and the service itself - even if they are able to go on to work in open employment for better wages.

Recommendation 1

Communication barriers should not hinder a person's right to work or the opportunity to be employed, nor should it result in unfair work conditions or unlawful termination. As a matter of course the option of a support person for every person with intellectual disability entering the workplace negotiation process and any time where their employment may be in doubt should be available, at the cost of the Australian Government.

Wages

Most people with intellectual disability in open employment receive wages that are calculated against their productivity. This is called the Supported Wages System which calculates 'disability wages...by multiplying the relevant minimum wage with a percentage that reflects the employee's assessed productive capacity'¹

Whilst we have some general concerns about low disability wages, the Supported Wages System is generally the fairest way to calculate productivity based wages and has at times been an incentive for employers to employ people with intellectual disability. CID has been pleased to see a commitment by the Australian Government to utilize the Fair Pay Commission to ensure that 'people with disabilities are competitive in the labour market' and that they will preserve Australian Pay and Classification Scales, the Supported Wages System and Federal Minimum Wagesⁱ. We are also pleased to see the \$2.9 million commitment in the recent Federal budget to be invested over four years into the Supported Wages System to allow 1400 additional workers with disability to access an independent wages assessment to ensure they are receiving a fair day's pay for their work.

CID's major concern regarding wages is that Federal Minimum Wages, once set, will be lower than current State Awards. All state agreements and awards will have to transition to the federal system within the next three years. This could result in people with intellectual disability being worse off financially under the new system.

Recommendation 2

The Fair Pay Commission should look into current State Awards and ensure that Federal Minimum Wages are comparative with, or better than, these awards; ensuring people with intellectual disability are no worse off financially under the new WorkChoices system.

We thank you for the time taken to read this submission. If you have any additional inquiries please do not hesitate to contact Lee-Anne Whitten on 02 9211 1611 or lee-anne@nswcid.org.au

ⁱ WorkChoices Fact Sheet 16, Australian Government

ⁱⁱ WorkChoices Fact Sheet 16, Australian Government