Submission
No 41

INQUIRY INTO IMPACT OF COMMONWEALTH WORKCHOICES LEGISLATION

Organisation: Inner City Legal Centres

Name: Ms Pat McDonough

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Date Received: 16/06/2006

Theme:

Summary

ICLC

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Legislative Council Social Issues Committee,
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15 June, 2006

Dear Sir/Madam,

SUBMISSIONS

Inquiry-Impact of Commonwealth Workchoices Legislation

We refer to your letter of 23 May, 2006 and to my telephone conversation with the Secretariat on Thursday last when I was advised that there was sufficient time for the Centre to provide submissions to the Inquiry. Thank you for this opportunity.

The Inner City Legal Centre (ICLC) endorses the submissions dated 26 May, 2006 provided to the Inquiry by the Combined Community Legal Centre Group.

The ICLC is one of the smallest community legal centres in NSW, however 21% of all enquiries made to the Centre relate to employment issues. Employment enquiries are the highest number of all enquiries directed to the ICLC.

The ICLC has just recently been funded to run a project on women in the workforce - "Womens Employment Rights Project". The project will provide training and legal advice to advocates and agencies who provide assistance to vulnerable and disadvantaged women. The funding arose as a result of the Centre's concern by the potential impact of workchoices on our client base.

Unfortunately there has not been sufficient time for the project to collect case studies which would be useful to the Inquiry. However, based on the cases the Centre has been involved in over the years, we would like to make short submissions on 3 of the issues raised in your 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;**

Clients who come to the ICLC often have low levels of English and limited educational experience. Some clients have limited experience in the workforce such as young people. Also the Centre has clients who spend long periods out of the workforce for child care and/or family reasons such as women. The majority of our clients are not in trade unions and consequently lack a genuine understanding of the award system and any rights and entitlements they may be due.

As a consequence of the workchoices legislation, we believe that workers such as our clients who are often unskilled and/or casual workers will not be able to bargain with their employer for the same or similar wages payable under the current awards as well as maintain the same conditions. Workers will just accept any agreement given to them in order to keep their job. In the event that they refuse to sign an agreement which means lower wages and/or conditions the only remedy will be an application to the AIRC on the grounds of unlawful termination. Moreover, unless the matter is successfully conciliated in the first instance the worker's only option is to either withdraw the application or the proceed to the Federal Court. This is a cost jurisdiction which saw only 5 applications to the Federal Court in 2005. Obviously, this is not an option for most workers.

A woman returning to work after a break of one year or more to raise children, will have very little bargaining power when negotiating wages and conditions in the form of an AWA, as a long break from the workforce, together with the fact that an employer can legally say "sign it or you don't get the job". Depending on her circumstances she may be compelled to sign the agreement and accept substandard wages and conditions because she needs the money.

The following are 2 recent case studies of women whose employment was terminated. In Case Study 1, the client was terminated just before 27 March, 2006 when workchoices came into operation. In Case Study 2, an 18 year old girl's employment was terminated about 6 weeks after the commencement of workchoices.

<u>Case Study 1</u>

A 49 year old beauty therapist was terminated after her employer assaulted her leaving large bruises on her arms. The client had been employed for 9 months, but had been in Australia for less than 2 years. After the termination the Centre discovered that the employer had not only unfairly dismissed the client and committed a criminal offence, he had also not paid any of her taxation deductions to the ATO, he had not paid any superannuation into an account for her, he had no worker's compensation insurance and there was an outstanding under payment of wages. An application was filed in the NSW Industrial Relations Commission and after 2 conciliations the matter was settled by

payment of an amount of money satisfactory to the client. A deed of release was entered into by the parties. Complaints were made to Work Cover, the ATO and the Police. Whilst the client received compensation for the unfair dismissal, she does not have a job.

Case Study 2

An 18 year old country girl (8 hours drive south of Sydney) after completing her HSC and after answering an ad on the internet, she was successful in her application for a traineeship in Certificates 3 and 4 - Real Estate. The traineeship paperwork was never completed by the employer. Because of the difficulty in trying to live in Sydney on $316 per week, the client's mother rang the employer and asked him to complete the traineeship papers, specifically the paperwork which would mean a living away from home allowance of $77 per week together with a travel concession card. The client's mother was told to mind her own business because her daughter was 18 years old. The client's employment was terminated 2 days later after the employer discovered the client was keeping a diary of events on the advice of her mother. The next day a letter of termination was delivered stating the grounds for the termination were performance based. The letter also had attached hand written payslips for the whole period of her employment. It was also discovered after the termination that her taxation deductions had not been paid to the ATO, the superannuation levy had not been paid and there was an outstanding under payment of wages claim. The under payment of wages included over time of 10 hours per week because the client worked 48 hours per week as well an underpayment of the base wage for an 18 year old clerical worker. There is no unfair dismissal remedy for this young girl. A complaint has been made to the Office of Workplace Services requesting them to collect the unpaid wages and another complaint has been made to the NSW Department of Education and Training about the Real Estate agents failure to complete traineeship paper work, etc. Whilst the client should be successful in her unpaid wages claim, she does not have a job.

NB The client's mother spoke to Kevin Andrews who told her to put in a complaint to the Office for Workplace Services because "this could not happen".

Both these clients worked for constitutional corporations. Both employers ran very small businesses. In case study 1 the client's employment was terminated on 14 March, 2006, 14 days prior to workchoices. In case study 2 the client's employment was terminated on 17 May, 2006. Only case study 1 had a remedy for unfair dismissal, whereas both clients had been very unfairly dismissed.

(b) The impact on rural communities

With the closure of the NSW Working Womens Centre which was a state based service, the women of country NSW were left without a comprehensive legal service which provided advice and representation in employment matters. Prior to the introduction of workchoices, the major difficulty for all workers residing in country areas, especially very small towns, if they are not working in

unionized workshops, there is a great difficulty in obtaining free access to l advice and representation. The complexity of workchoices has made it more difficult for rural workers to understand the system, especially with the lack of legal advice and assistance.

Typically ICLC clients are from single parent families or sole carers. Country workers with this background will have less bargaining power than their city sisters and brothers. The replacement of the award system with only 5 minimum conditions, together with the workchoices complicated transitional provisions with terms such as 'notional agreement preserving a state award' - "NAPSA" or 'preserved state agreement' - "PSA", or 'preserved notional terms' or 'preserved notional entitlements', will further alienate country workers without access to comprehensive advice and assistance.

The welfare to work legislation together with workchoices will impact severely on rural people, mainly women. After 1 July, 2006, only sole carers of school children under 8 years of age who apply for the Parenting Payment will be eligible.

Sole carers of children over 8 years will only qualify for Newstart and are therefore required to comply with the activity requirements. The refusal of an offer of work, will mean a non payment of benefits for an 8 week period, unless the parent can prove that she/he will be less than $1300 per annum ($25 pw) worse off after meeting the costs of child care, travel, increased rent, taxation liabilities and any drop in income support as a result of earned income.

This situation places sole parents living in the country in a much lower bargaining position than their city sisters and brothers because there is already high unemployment in the country. This system places country parents in an invidious position where they have no choice but to accept any job regardless of the fact that in many cases the safe guards built into the industrial relations system over decades before workchoices no longer exist. In these circumstances how can a parent negotiate hours of work which will suit her/his family obligations, especially if the workplace is distant from home and requires hours of travel.

(d) the impact on balancing work and family responsibilities

See (b) above for comments on rural parents.

"Significantly, four in ten Australian workers (mostly female) have responsibility for the care of someone else". Workers are now being pressured to work both harder and longer (see Case Study 2 where an 18 year old worked 48 hours per week and was paid for 38). There is a growth in the numbers of women doing paid work, whereas previously they would stay home and care for their children. Women traditionally move in and out of the workforce to raise their children or care for an older relative or a family member with a disability.

The ICLC has observed that women before workchoices, in many cases had problems returning to work after a period of maternity leave. Suddenly their job does not exist any more, or suddenly there is a problem with their work performance, that they had never been told about before. Because of the lack of suitable child care, women who formally worked full time and intended to return to work full time, suddenly find that it is impossible to get full time child care. A women requesting a return to work on a part time basis suddenly discovers that part time work is an impossibility for the employer. All 3 scenarios occur constantly, despite strong legislation providing women with the right to return to work after the birth of their baby.

Whilst workers finding themselves in one or more of these situations have recourse to one of the discrimination jurisdictions, these jurisdictions do not provide a quick resolution, nor do these jurisdictions have the power to order reinstatement. Both the Human Rights and Equal Opportunity Commission and the Anti Discrimination Board offer a conciliation system. This system provides a conference where the parties meet with the intention of resolving their differences. The round table conferencing system is highly emotional and upsetting for a complainant, especially if they are unrepresented.

If the parties do not resolve the complaint or the employer does not attend the conference (which is his/her right to do) the complainant has no alternative but to drop the complaint or commence proceedings in the Federal Magistrates Court or the Administrative Decisions Tribunal, and face a possible costs order if they are unsuccessful.

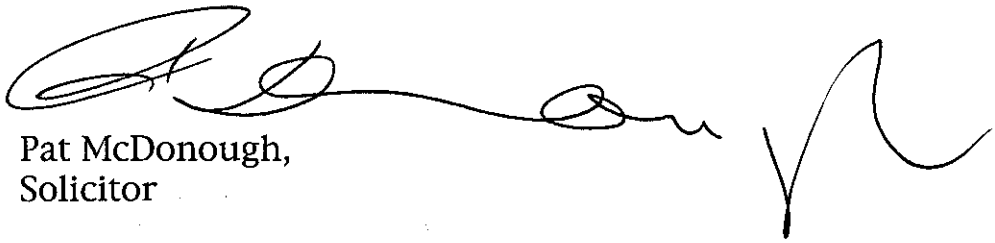
Whereas the alternate jurisdiction, in either the NSW or Federal Industrial Relations Commissions is much faster and less painful for the applicant. The conference is set down for hearing within a few weeks of the filing of the application, the Commissioner has the power to reinstate a worker unfairly dismissed, a power that the discrimination jurisdictions do not have. The Commission is much more adversarial and formal than the discrimination jurisdictions, however, it is our view that the conduct of the matters are not nearly as tense and emotional for the applicant. If the matter does not settle at,or after the conference, the matter is quickly set down for a hearing. Both jurisdictions are "no cost" jurisdictions unless the matter is frivolous or vexatious.

Workchoices now excludes workers found in the above situations from an unfair dismissal remedy if the worker was employed by a constitutional corporation with less than 100 employees. The only recourse is an application on unlawful grounds which does offer a conciliation. However, if the conciliation is unsuccessful, the workers only recourse is to file an application for the matter to be heard in the Federal Court, which can be a very costly decision, especially if the applicant is unsuccessful.

Flexible working time is especially critical for workers with family responsibilities. Workers need to balance their working hours with their domestic responsibilities. Whilst the situation, especially for women, was always precarious when returning to work after a period off work because of child care responsibilities, women are now further disentitled by workchoices.

We hope that the information is useful for your deliberations.

Yours faithfully,
INNER CITY LEGAL CENTRE,



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16/6/06