Brotherhood of St Laurence
Working for an Australia free of poverty

ANGLICARE AUSTRALIA

Proposed amendments to the Workplace Relations Amendment (Work Choices) Bill 2005

Our comments span five key areas:

- the terms of reference, goals and functions of the new Australian Fair Pay Commission (AFPC)
- the unfair dismissal provisions and the need for adequate protections against employer misuse of power
- the protection of low income earners and the need to take into account the interaction between wage-setting, the taxation system and the social security system
- the possible impacts on families, including increased pressures on family relationships and social cohesion, and the employment prospects of Australia's most vulnerable families
- the need for additional time to review the legislation.

Our 10 key recommendations are as follows:

1. **The wage-setting parameters of the AFPC (Section7J) should be amended to direct the Commission to have regard to:**

   providing a safety net for the low paid, taking into account the adequacy of wages and needs of low paid workers.

2. **The AFPC should be directed to adopt the goal of reducing poverty and social exclusion in Australian society and a mechanism for measuring progress on this objective.**

3. **The Commission should be required to meet annually to consider adjustments to the minimum wage (Section 7K).**

4. **Given the uncertain benefits, we believe the Government should retain unfair dismissal protection for employees in organisations with 20 or more employees.**

5. **The provision allowing employers to sack people for 'operational requirements', defined as including 'economic, technological, structural or similar' reasons (Sections 170CE(5C) and 170CE(5D), 170CEE), is too broad and should be removed.**

6. **The No Disadvantage Test should be retained or an alternative test included in the Bill.**

7. **Section 103R allowing employers to unilaterally replace agreements with the AFPC Standard (AFPCS) after the former have expired should be removed.**
8. **Section 91C(2) and 91C(3) should be amended to average the 38-hour week over a month, not a year.**

9. **The provision allowing employees to 'cash out' two weeks' annual leave should be removed.**

10. **Section 101B(1)(b) should be amended to ensure that all workers are entitled to penalty rates based on the relevant award conditions**.

1 Terms of reference, goals and functions of the new Australian Fair Pay Commission

We are concerned by the Government's stated desire for a reduction in real value of the minimum wage and believe that the weight of evidence and expert opinion suggests that this will result in a growth in the number of working poor and in increased hardship for low paid workers generally, with little economic dividend in terms of employment and productivity.

We support the ability of the Fair Pay Commission to undertake or commission research and to monitor and evaluate the impact of its wage-setting decisions to ensure these are economically responsible.

In relation to the operation of the AFPC, we believe the current proposals are unbalanced and pay insufficient attention to fairness and the social dimension of wages and employment—in particular, the role of the minimum wage in preventing poverty and social exclusion amongst individuals and families.

We call on the Government to make the following amendments:

- **The wage setting parameters of the AFPC (S.7J) should be amended to direct the Commission to have regard to:**
    - **providing a safety net for the low-paid, taking into account the adequacy of wages and needs of low-paid workers.**

- **The AFPC should be directed to adopt the goal of the reducing poverty and social exclusion in Australian society and a mechanism for measuring progress on this objective.**

- **The Commission should be required to meet annually to consider adjustments to the minimum wage (S.7K).**

- **A requirement should be placed on the Commission that research undertaken should focus on the economic *and* social implications of changes (or absence of change) in the minimum wage.**

- **The Commission's membership should follow the social partnership model adopted by the UK's Low Pay Commission and include business, employee and academic representatives.**

- **The criteria for the appointment of the chair of the Commission (S.7P(3)) should be broadened to include skills in workplace relations, not only business or economics.**

- **The Bill should include a requirement that the review process involve public consultation, including the receiving of submissions and public hearings.**

2 The unfair dismissal provisions and the need for adequate protections against employer misuse of power

We believe the case for removing unfair dismissal protection for employees in organisations with less than 100 employees in order to stimulate jobs growth has not been made.

Opinion surveys asking employers if they would hire workers if unfair dismissal protection was withdrawn have suggested some positive impact on employment, but research looking at

employers' actual behaviour has found no conclusive evidence that current laws impede employment. International research is similarly ambiguous on the impact of unfair dismissal laws. Moreover, Australia is consistently recognised as a country with low firing costs and the laws do not apply to temporary or casual workers or to high income earners in most states.

This suggests that the primary impact of this change will be an increase in uncertainty and insecurity for Australian workers and their families. Workers with low bargaining power will be particularly vulnerable, and face being forced to accept harsh or excessive working conditions.

We call on the Government to make the following amendments:

- **Given the uncertain benefits we believe the Government should retain unfair dismissal protection for employees in organisations with 20 or more employees.**
    - **It should also commission research to estimate the actual impact of this change on employment.**

- **Provisions allowing employers to sack people for 'operational requirements', defined as including 'economic, technological, structural or similar' reasons (S.170CE(5C) and 170CE(5D), 170CEE) are too broad. Under these circumstances, employees in organisations with over 100 employees will be unable to seek a remedy via unfair dismissal provisions even where the dismissal is harsh, unjust or unreasonable. This section should be removed.**

- **Section170CE should be amended to ensure organisations with more than 100 employees are not able to avoid unfair dismissal laws by reorganising their workforce. This could be achieved by including the following:**

    'For the purposes of calculating the number of employees employed by the employer, related bodies corporate as defined by the Corporations Act 2001 are deemed to be the one entity.'

- **The negotiation of unfair dismissal arrangements should not be restricted via the 'prohibited content' provision of S.101D. Employers and employees should be given the choice to negotiate and include unfair dismissal arrangements in agreements.**

We also have concerns about a range of additional aspects of the Bill that we believe push the balance of power too far in favour of employers and provide inadequate protection for workers. Again disadvantaged groups in the labour market will be most vulnerable to a loss of wages and conditions and subsequent poverty and social exclusion. Particular areas of concern include the removal of the No Disadvantage Test, the ability of employers to unilaterally replace expired agreements with the Australian Fair Pay Commission Standard (AFPCS), and a restricted ability for employees to join unions, bargain collectively and take industrial action

In relation to these points, we call on the Government to make the following amendments:

- **The No Disadvantage Test has been in place to ensure that employees are not on balance worse off under an agreement than they would have been under an award and has been an important safeguard protecting workers with little market power. Its replacement with the Australian Fair Pay and Conditions Standard will mean that such workers now face the real possibility of a significant drop in their pay and conditions to below the previous award level.**
    - **The No Disadvantage Test should be retained or an alternative test included in the Bill.**

- **Section 103R allows employers to unilaterally replace agreements with the AFPCS after the former have expired. This could see employees facing immediate and significant cuts in pay and conditions. This section should be removed.**

- **Currently, where there is a transmission of business employees' award or agreement, entitlements are also transferred. Under the proposed Bill this will no longer occur and employers will be able to cancel the award or agreement unilaterally after a transmission of business (whether genuine or not) and replace them with the AFPCS. The current arrangements should be retained.**

We believe the right to join a union, bargain collectively and take industrial action are important mechanisms by which employees with less market power are able to negotiate fair terms and conditions of employment. However, a number of sections within the Bill significantly limit these rights.

In addition to making it easier for employers to force employees onto individual contracts, the Bill limits the right of union officials to enter workplaces; it imposes a lengthy and complex process for employees to engage in industrial action; and it exposes unions and employees to the prospect of being sued for damages under a wide range of circumstances.

In relation to these points, we call on the Government to make the following amendments:

- **Remove additional restrictions on right of entry for union officials (S.109–S.109ZO).**

- **Remove S.104(6) which allows an employer to make signing an individual contract a condition of employment.**

- **Include a requirement in the Bill for employers to recognise a union and bargain collectively where this is selected by over 50 per cent of the workforce.**

- **Given that Australia currently experiences historically low levels of industrial action, we believe additional restrictions on the right to take industrial action are unnecessary and should be removed.**

- **Remove S.107H, J and S.108C, D, E, J which expose unions and employees to being sued for damages in a range of situations.**

- **Include a requirement in the Bill to bargain in 'good faith'.**

We believe outworkers are a group with special needs and are particularly vulnerable and that the legislation must ensure that the terms and conditions of a prior determination of an outworker's AWA are those of the relevant Award. This will ensure that the overall pay and conditions of employment are fair and reasonable.

- **Section 103R should be altered to read:**
  'An industrial instrument mentioned in subsection(3) has no effect in relation to an employee if:
    - **the workplace agreement operated in relation to the employee**
    - **the workplace agreement was terminated**

  except in the case of outworkers, where the industrial instrument mentioned in subsection (3) applies to the extent that it ensures that the overall pay and conditions of employment are fair and reasonable compared with pay and conditions of employment specified in a relevant

Award or Awards for employees who perform the same kind of work at an employer's business or commercial premises.'

3 Protection of low income earners and the need to take into account the interaction between wage setting, the taxation system and the social security system

We are concerned that these changes are taking place alongside welfare to work changes that will reduce benefits for a considerable number of sole parents and people on the Disability Support Pension, and will require them to look for part-time work when their youngest child turns 8 (in the case of sole parents) or if they are able to work 15–29 hours per week (in the case of people on the Disability Support Pension).

These workers are likely to have low bargaining power and significant care responsibilities and they face a high risk of being forced to accept unreasonable working conditions in a more individualised and 'deregulated' labour market.

Overall, the combination of a more deregulated labour market in which wages and conditions would be expected to fall, the removal of unfair dismissal protection and stricter activity test requirements raises the possibility of many disadvantaged groups in the labour market being forced to accept substandard and unreasonable working conditions.

The move to a more 'deregulated' labour market is also likely to see a growth in the low pay/low skill sector and an increase in the number of workers trapped in poor-quality jobs and facing economic hardship and social exclusion over the long term.

Given these parallel policy changes, we call on the Government to:

- **Ensure that employment conditions are maintained at a level which will ensure equitable treatment of all individuals in the labour market regardless of their bargaining power.**

- **Ensure that individuals who decline to take up employment, or leave their employment, because of harsh or unreasonable conditions will not be penalised in the welfare system.**

- **Guarantee that welfare benefits will not be reduced in response to a decline in the real or nominal value of wages.**

- **Introduce measures through the taxation system to boost the family incomes of the low-paid.**

4 Possible impacts on families, including increased pressures on family relationships and social cohesion, and the employment prospects of Australia's most vulnerable families

We are concerned that a number of aspects of the Bill will negatively impact on families and social cohesion. Among the most important of these is the lack of protection for overtime and unsocial hours. Around two-thirds of Australians already work sometimes or often at unsocial times and there is considerable evidence documenting the negative impacts this can have on marital stability and workers and children's well-being.

We believe that the Government has a responsibility to ensure that workers with family responsibilities receive a secure living wage, predictable common family time and holidays, adequate compensation for work at unsocial times, and protection from excessive hours.

However, by international standards Australia already performs poorly in many of these areas. Australian workers have long working hours, high levels of insecure work and poor leave entitlements. A large proportion of workers already work unsocial hours. The proposed changes are likely to exacerbate these problems.

Particular problems with the Bill include the capacity for employers to average the 38-hour week over a year, the ability for AWAs to set aside key award conditions (public holidays, rest breaks, annual leave loadings, allowances, and penalty, shift and overtime loadings), the right to 'sell' two weeks' annual leave, and the lack of entitlement to payment for overtime unless specified in the agreement or award.

To reduce the impact of the changes on families, we call on the Government to:

- **Amend S.91C(2) and S.91C(3) to average the 38-hour week over a month, not a year.**
- **Remove the provision allowing employees to 'cash out' two weeks annual leave.**
- **Amend S.101B(1)(b) to ensure that all workers are entitled to penalty rates based on the relevant award conditions.**
- **Amend S.7C(3)(f) to ensure all employees (other than casual employees) continue to be paid for public holidays if they do not work.**
- **Ensure all employees are entitled to overtime payment for all 'reasonable additional hours' worked**
- **Remove S.170AB to ensure that all employees are entitled to a 30-minute unpaid meal break after 5 hours' continuous work.**

5 Need for additional time to review the legislation

To do as the Government has urged and judge the full legislation on its merits requires appropriate time. We hold grave concerns that the present timeframe is not sufficient. All Australians need to understand the substance and impact of these proposed changes.

The changes in question are profound and will fundamentally alter the regulatory context of employment relationships, as well as century-old institutions such as the Australian Industrial Relations Commission. The changes represent a significant reduction in regulatory protection for workers in the labour market, and a thorough examination and discussion of the likely social and economic benefits and/or costs is essential.

Without sufficient time, we will be denied this opportunity. The size and sheer legal complexity of the legislation require greater time than is envisaged by the Government. Some 1200-pages of material were presented by Government. In considering what would constitute a fair period of review, we look to the time spent formulating the legislation and explanatory notes, and the time required for lay people to read, digest and seek advice on complex material prepared with the involvement of a large number of leading Australian industrial lawyers.

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