

13 March 2015

Productivity Commission  
Inquiry into Workplace Relations Framework

BY EMAIL: workplace.relations@pc.gov.au



Dear sir or madam

## COMMENTS RELATING TO TERMINATION OF EMPLOYMENT

The Northern Rivers Community Legal Centre provides free civil law advice and assistance between Tweed Heads and Grafton and west to Drake. We have assisted many clients in relation to employment entitlements and termination of employment.

We have noticed the follow issues that we hope will be addressed by your inquiry:

- 1) The most difficult issue for our clients is in the process for hearing general protections claims under Part 3-1 of the *Fair Work Act 2009*. Our clients' general protections claims proceed to conciliation and if they are not resolved at conciliation must proceed to the Federal Circuit Court (FCC). The FCC does not provide a circuit to Lismore for employment matters so matters must be heard in Brisbane. We are severely under resourced and often cannot offer representation in Brisbane. This makes it very difficult for our clients to pursue this avenue and they are often forced to settle for paltry amounts at conciliation despite having strong claims against their employer.

**We suggest that the Far Work Commission (FWC) be able to hear general protections claims or that the FCC be resourced to enable it to be able to sit on circuit as it does for family law matters.**

- 2) The 21 day time limit for filing an Application in relation to dismissal is too short in many circumstances. Some of our clients have been dismissed after a lengthy campaign of bullying by employers. Their first point of call after dismissal is a doctor as their mental health has been seriously affected. Many are depressed and start taking depression or anti-anxiety medication after their termination. In this state employees are often not able to prioritise obtaining legal assistance, providing instructions, identifying relevant documents or competently instructing a solicitor.

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**Administration & Legal Service**

**Tenants Advice & Advocacy Service**

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Further some employers delay providing separation certificates or clarifying reasons for dismissal which means employees do not seek advice immediately after their dismissal.

Additionally, the 21 day time limit puts undue pressure on our service which is under resourced and looks to be further squeezed by funding cuts effective 30 June 2015. With the short timeframe to file Applications to the FWC we have to prioritise employment matters putting pressure on our service and creating longer wait times for other clients.

**For these reasons we suggest that 28 days might be a more realistic time frame and not cause any undue hardship on employers.**

- 3) We have had several termination matters proceed to conciliation where the employer has not filed a Response to the Application. This makes it very difficult for us to advise our clients as to their prospects of success and to advise them whether the settlement figure offered is reasonable.

**We suggest that the legislation be amended to require employers to file a Response prior to conciliation.**

- 4) Our clients have reported dissatisfaction with the services provided by the Fair Work Ombudsman (FWO) in relation to employment entitlements. They report that the Ombudsman has done little, if anything, to calculate or chase their entitlements and they have been referred to us for assistance with local court proceedings to recover their entitlements.

It is often difficult for employees to obtain necessary records from employers, identify relevant Awards and calculate what their correct entitlements are.

**We suggest that the FWO, as a minimum, investigate and calculate an employee's entitlement and make a finding as to what an employee's entitlements are. The FWO finding should then be easily enforceable through local court proceedings.**

This is a just a brief summary of the issues and we would be happy to discuss them further, please contact the Centre on (02) 6621 1000.

Yours sincerely  
*Northern Rivers Community Legal Centre*

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Solicitor