

FORWARD TO THE PAST

NATIONAL PAY EQUITY COALITION

**Submission to the Senate Inquiry into the
WORKPLACE RELATIONS BILL**

June 1996

NATIONAL PAY EQUITY COALITION (NPEC) SUBMISSION TO THE SENATE INQUIRY INTO THE WORKPLACE RELATIONS BILL

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TERMS OF REFERENCE INDEX

The terms of reference have been addressed in an integrated way throughout this submission - to do otherwise would involve substantial repetition.

The table below provides an index of where points relate to the terms of reference..

Terms of Reference Index	National Pay Equity Coalition Submission Section
a whether the various state industrial relations jurisdictions can or will provide adequate protection for workers employed under state agreements	Executive summary
b the implications for the Australian economy	Executive summary,
c whether the provisions of the Bill will fulfil Australia's international obligations and whether the provisions of the Bill will affect Australia's international relations	Executive summary Recommendations Equal pay, section 2.12
d the effects of similar provisions in other countries	Deregulation, section 1
e the extent to which the proposed legislation impacts on the national skills accreditation, traineeships, apprenticeship system and vocational education systems and whether state legislation will be complementary to the Federal Act	Recommendations
f whether any proposed powers exercised by the Australian Industrial Relations Commission would be better exercised by another federal government body, and whether further consequential amendments will be needed to other acts to achieve this	
g whether any proposed powers exercised by another Federal Government body would be better exercised by the Australian Industrial Relations Commission, and whether further consequential amendments will be needed to other acts to achieve this	Equal pay, section 2.12
h the impacts on small business of the proposed legislation and the extent to which the proposed transitional arrangements provide adequate support for small business in dealing with industrial matters	

Terms of Reference Index		National Pay Equity Coalition Submission Section
i	the extent to which proposed Budget cuts will reduce the capacity of the AIRC to perform its roles	
j	whether the Bill as a whole or in part is constitutional	Section 2.7
k	the extent to which state legislation on unfair dismissals complements or will complement the proposed federal act	Section 2.7 Proposed amendments
l	whether the provisions of the Bill provide a fair balance between the rights of employers and employer organisations and the rights of workers and unions	Executive summary Section 2. Proposed amendments
m	whether reporting mechanisms of the progress of enterprise bargaining are adequate and might need to be improved in the light of the Bill	Proposed amendments
n	the impact of the proposed legislation on the balance between work and family responsibilities	Section 2 Proposed amendments
o	the impact of the proposed Bill on youth employment and training	Section 2.9 Proposed amendments

EXECUTIVE SUMMARY

This submission raised serious concerns about the likely impact of the proposed new Industrial Relations Bill on women workers. It draws on the wealth of research which shows that the more deregulated the labour market, the more women are disadvantaged. In the last decade there has been a significant shift in the industrial relations system from national wage cases and conditions regulated by awards to one where more and more decisions affecting people's working lives are determined by their bargaining power at a workplace level.

The implications for women of this approach to determining wages and conditions have been spelt out many times to the previous Government and have been the subject of four consecutive submissions to the AIRC Reviews of Wage Fixing Principles. Indeed the DIR's own extensive research on the impact of enterprise bargaining could not help but reach the same conclusions. A raft of academic research has also closely scrutinised the position of women in a more deregulated labour market. (See references at the end of this submission) Research demonstrates that a decentralised, deregulated industrial relations system delivers poorer employment conditions and a larger gender pay gap for women.

In the face of all this evidence, the key question NPEC poses to the Senate Inquiry and to the Government is why it continues to persist with an approach to industrial relations which is so clearly unable to achieve pay equity and to provide fair and reasonable conditions of employment for the vast majority of women? Is the research not convincing and if not why not? Is there any evidence that the Government can provide from Australia or other comparable countries that women are better off in deregulated labour markets? Or is it that the impact on women does not matter? It seems that the (also unproven) belief that deregulation will improve productivity is overriding the role of the Government in representing the interests of half the population.

As will be indicated in this submission, the claims made by the Government that the proposed new system will benefit women are not sustainable and are not supported by any evidence either from Australia or internationally.

The proposed system is not de-regulation, but re-regulation in the interests of employers. It is cloaked in rhetoric about choice and freedom for women. Under the proposed bill women will be less able to access their rights, less able to protect their existing entitlements and less able to improve their labour market position.

The recommendations contained in this submission are formulated as amendments to the proposed Bill, with the intention of countering and softening the worst aspects of the Bill.

However NPEC strongly recommends that the Bill itself is unnecessary. There is already plenty of flexibility and scope in the system for a balance between enterprise level issues, industry wide and across the board concerns to be addressed. Rather than going backwards and dismantling the current industrial relations system, NPEC proposes that it provides a solid basis for going forward and instituting reform to achieve pay equity and remove discrimination.

The submission refutes five claims that have been made by the Coalition that the Bill :

1. retains anti discrimination and pay equity provisions
2. offers more choice and freedom from union restrictions
3. provides a choice between the award system and enterprise/individual bargaining
4. is in plain English and is a simple and easy system
5. is based on an electoral mandate.

The problems with these claims are summarised briefly below.

1. Retention of anti discrimination and pay equity provisions

The claim that the proposed Bill retains pay equity and anti discrimination provisions does not hold up to close scrutiny. The most generous interpretation of the provisions on pay equity and discrimination is that the avenues for achieving equity have been significantly reduced. The provisions might provide those few individuals who have the means and the stamina to undergo lengthy legal proceedings with a generous compensation for the discrimination they have suffered. This is not the same as reducing the earnings gap and removing other forms of discrimination by having a fair industrial relations system, including specific equity provisions.

2. More choice and freedom from union restrictions

Less flexibility for women

Our submission also counters the Coalition's claim that the system offers more choice to women and frees them of the restrictions imposed by the 'male dominated union movement' on flexible work. Unions and indeed employers, governments and the precursors to the Industrial Relations Commission have historically played their part in undervaluing the contribution of women in the paid workforce and confined women to a secondary and inferior position. To acknowledge this is not to suggest that women would have been better off without unions or without a centralised system. On the contrary all the gains that women have made (including the Equal Pay Decisions of the then Conciliation and Arbitration Commission) would not have occurred without the active support and initiative of unions.

Women make up a significant proportion of union members (36 per cent) and unions have better representation of women at senior levels than employers and the Federal Parliament.

Women union members better off

Most importantly women union members working full time earn on average 12 per cent more than their non union counterparts and part timers who are union members are paid 32.4 per cent more than non-union members. Like all areas of civic society, unions need to focus much more attention on the needs of women workers. This is very different from saying that

the role of unions should be reduced and women are better off negotiating individual contracts on their own behalf as the Coalition claims. On the contrary, restrictions on union representation and operation will significantly harm the position of women in the labour market.

3. Choice about awards system

The Coalition's claim that workers will have a choice between the award system, agreements and individual contracts cannot be substantiated. It is not a real choice when the award system will be so skeletal that it no longer contains standards beyond a certain minima and when there is no capacity for updating them so that they remain relevant.

Award reform process should continue

This submission argues that the stripping back of awards is a backward step for women. To acknowledge that many awards reflect the gender biased result of negotiations between unions and employers, arbitrated and/or endorsed by tribunals and/or courts does not mean that awards should be thrown out altogether. In the last decade a great deal has been done to restructure awards, to remove outdated classifications and replace them with skills based career paths. Within this process, it has been possible to reconsider the basis for valuing certain skills above others and to reveal the gender bias in attitudes towards work traditionally done by women. This process has not been completed and there is certainly a need to systematically examine awards for indirect discrimination. The Government's Bill abandons these processes and instead strips back awards to the barest minima.

Awards important for women

Instead of reform of awards to ensure that they reflect skill, effort and levels of responsibility, women will be left to win what they can according to what the employer/market is willing to pay. The discretion allowed to employers under the current system has resulted in women earning only 54 per cent of the overaward payments made to men. Overaward payments are a means of recognising the value of the work to the employer and the quantum reflects the bargaining power of the workers in that industry. The wide gap between discretionary male and female earnings is an alarming indication of how the market will value women under the proposed new Bill.

Women in deregulated market

Many women are already employed as casuals, contract staff and outworkers where there is scant award coverage, with even less capacity to enforce entitlements. This substantial pool of low paid, mainly women workers give a clear and grim picture of what the world of work will be like for more and more women under wholesale deregulation.

4. Simple and easy

Fewer rights for employees

The system the Coalition proposes is anything but simple. It is more accurately described as a different form of regulation which increases the bargaining power of employers. It encourages a focus on reducing labour costs. The Bill is long and complex, reflecting a host of obstacles to achieving equity and gaining redress for unfair employment practices. It places enormous onus on employees to know the avenues available to them in the event of a grievance. The establishment of the Employment Advocate creates another Government controlled structure for roles that are currently functions of the Australian Industrial Relations Commission.

More work for employers

The intention appears to be to reduce the capacity of unions to negotiate pay increases and establish standards that benefit all workers regardless of their union membership. However, it will also require substantial resources and industrial relations expertise from the many employers who have been satisfied to rely on the award system to manage labour relations in their organisations, (AWIRS 1991).

Fragmentation inefficient

There will be many forms in industrial regulation in the same workplace - state and federal awards, certified agreements (operating differently under Division 2 and Divisions 3 of the Bill), AWAs, state agreements and unregistered agreements. This fragmentation is not conducive to efficiency. Indeed, the multiplicity of awards and classifications was seen in the past by employers as a real productivity impediment. This complexity also makes it much harder for employees to know and secure their entitlements.

Increased costs

Legal and court costs for employer's and employee's can be expected to rise, since a greater proportion of the workforce will be covered by AWAs and their only avenues for redress for breaches of their contracts will be through the Employment Advocate (who is not required to take their case) or through the courts. This compares unfavourably to the current relatively cheap and quick processes for resolving complaints through the AIRC.

The commitment to downgrading and sidelining the award system has real potential to increase transaction costs in the industrial relations system by prohibiting dealing with certain matters at award level even where that would be the most efficient option in particular industries. Many employers and unions and employees will be required to reiterate the same process simply to secure agreed and prevailing conditions in the form the Bill requires (eg moving conditions from awards to agreements). The whole process is highly conducive to generating disputes and mistakes. These very high process costs can only be recovered if the real operation of the proposed system is to reduce employee entitlements, although the Government has repeatedly stated that is not its intention.

From a pragmatic point of view, there is a real danger that the relative industrial harmony that has been built up over many years could disintegrate into chaos with a proliferation of small unions and a lot of energy diverted from the core function of organisations.

5. Electoral mandate

Workers worse off

As this submission will demonstrate, the proposals contained in the Bill go far beyond the mandate claimed by the Government. It is impossible to see how the Bill will be able to deliver on the Coalition's pre-election promise that no worker will be worse off. The sleight of hand is that the secret individual contracts which form the centre piece of the new system will make it much more difficult to identify the winners and losers and to uncover the almost certainly retrograde effects on pay equity. While broad Australian Bureau of Statistics figures will show pay data, the complex interplay of pay and conditions will be impossible to track.

Commitment to international standards

This Bill downgrades Australia's commitments to its international obligations under United Nations and (International Labour Office) Conventions and Recommendations. It is quite clear that the Federal Government does have constitutional power to ratify the Conventions and should implement them through national legislation. Removing the Conventions from legislation shows an intention to weaken the commitments and reduce compliance activity. A key function of international labour conventions is to fix certain employment rights agreed by the tripartite parties as fundamental and so immune from short term political interference. Extracting Australia from these international commitments, the legal and moral obligations of signatories, is not an approach or process for which there is any electoral mandate.

Equal pay provisions downgraded

The Coalition does not have a mandate for its diminution of equal pay provisions and, in fact, before the election, assured women's groups the existing level of protection of equal pay entitlements would continue.

Limitations on awards

The extreme limitations on what awards could cover and what could be the subject of an industrial dispute were not put forward.

Treatment of single business units

The treatment of single business units and multi-business agreements was not outlined.

Imposition of filing fees and awarding costs

The imposition of filing fees in dismissal matters and the very harsh provisions about awarding costs were not made public.

It is always questionable exactly which of their election commitments governments do and don't have mandates for. However, these aspects of the legislative scheme were not made public at all, making it is very hard to see how a mandate can be claimed.

This submission is divided into 2 sections:

Section 1 provides further elaboration of the need for a regulated industrial relations system that balances the needs of employers, employees and the wider society. The section draws on results of studies of individual contracts in WA and Victoria as further evidence of the need for checks and balances in the system which promote equity and prevent discrimination. It concludes with a summary of award provisions which will no longer be included if the Bill is implemented.

Section 2 analyses the proposed Bill in detail and raises specific concerns. In the context of support for a regulated industrial relations framework, suggestions are offered for how the worst aspects of the Bill could be amended to relieve negative impacts on women.

RECOMMENDATIONS

TABLE OF NPEC AMENDMENTS LINKED TO SCHEDULES

Workplace Relations Bill 1996	National Pay Equity Coalition Proposed Amendments
Schedule 1 Objects	• Include objects to promote training, consultation, career pathing, satisfying work, and to promote industrial harmony • Delete reference to limits in arbitration set by the Act • Ensure labour standards meet Australia's international obligations and attach the ILO Conventions to the Bill (including the Conventions on Termination, Discrimination, Workers with Family Responsibilities, Equal Pay, Minimum Wage Fixing, Freedom of Association, Right to Organise and Bargain Collectively) and the International Covenant on Economic Social and Cultural Rights, and the UN Convention on Elimination of All Forms of Discrimination Against Women • Discrimination should be defined throughout the Act in accordance with the ILO requirements (eg exclusions for junior rates, and for inherent requirements of "particular employment"- rather than the ILO specification of requirements of a particular job should be deleted).
Schedule 3 Employment Advocate	• The Employment Advocate would be unnecessary if, as suggested below, AWAs come under the scrutiny of the AIRC. • If established the EA should be free of ministerial direction and regulation and be set up as a statutory office • The provision for dismissing the EA for "incompetence or inefficiency" should be deleted because of the danger of interference with the EA's independence • The statutory establishment of the EA should include a requirement to investigate and meet the needs of women, people from non-English speaking backgrounds, young people and others who experience labour market disadvantage • The EA should be required to provide free legal assistance to complainants limited only by an appealable determination that the complaint is without merit • The EA should be established within the AIRC • Publish details of AWAs, in annual report to Parliament and make report available to public • Provide an annual report to Parliament

- Provide a review of impact of AWAs on disadvantaged groups, such as women, non-English speaking background workers, young workers, rural workers
- Provide free legal advice and representation
- Should be required to prosecute breaches
- Should not be allowed to delegate outside the Office of the Employment Advocate certain functions, such as prosecution, inspection, and assessment of breaches.
- The EA should be required to publish a Guarantee of Service (GOS) setting out performance standards including waiting time for dealing with inquiries and complaints, commitment to providing advice and assistance in appropriate languages and formats etc. The GOS should be the basis for determining the funding the EA would need to provide an adequate service.
- The EA should be required to ensure staff are adequately trained to provide advice and information for members of disadvantaged groups
- Delegation of EA powers regarding advice and information should be subject to appropriate training and specified standards
- Provision will have to be made for translators to be employed and/or funded
- EA services must be widely available at local level (perhaps through contracting with community organisations eg Working Women's Centres, Migrant Resources Centres, Youth Access Centres etc.)

Schedule 4

**Representation of rights
of employees**

- Delete section 118A altogether (inconsistent with abolition of "conveniently belong") or
- Make its operation subject to a ballot of employees at the workplace conducted by the Electoral Commission

Schedule 5

**Scope of industrial
disputes**

- Delete limitation to arbitral power
- Delete S 89A(2)
- Delete reference to limitation confined to minimum rates awards
- Prima facie, the existing award provisions should remain the basis of award minima
- The limitations on allowable award conditions should be removed especially with regard to organisation of working time, training, occupational health and safety, EEO and sexual harassment
- The limitation on inclusion of long service leave should be removed

- If there are to be limitations on allowable award conditions, there should be provision for special cases that additional conditions are necessary for the efficient operation of an industry or for fair employment practice
- If the award "simplification" provisions proceed, it should be provided that existing award provisions outside the allowable matters are available for inclusion in a certified agreement on the basis of a purely formal application rather than having to be re-negotiated
- Delete reference to focus on low paid workers in safety net matters
- Delete restrictions on dealing with industrial disputes where state awards apply
- Delete restriction on unions being heard on applications and require only that they establish coverage or an interest in the matter
- Delete the requirement for the AIRC to ensure award provisions are not too detailed, or not better dealt with at the workplace level, or do not inhibit efficiency. If these provisions proceed, require that the AIRC give weight to the views of the award parties that the matters should be dealt with in awards
- Delete the provision for a state agreement to override a federal award
- Remove the limitation on application of a state award where provisions have been removed from federal awards through award "simplification"
- Restore reference to requirement for awards to remain "relevant". The AIRC should require market surveys for test of relevance with regard to pay rates
- Restore requirement for "equal remuneration for work of equal value without discrimination based on sex" ILO Convention 100.
- Maintain paid rates provisions
- The model anti-discrimination clause should be a required award provision
- There should be a requirement for an annual report on developments in the award system including progress in award "simplification", action on award breaches, new awards, award coverage including federal/state movements), levels of safety net increases, Test Cases etc.

Part time work

- Include relevant *Carers leave Test Case* provisions as minima, particularly maximum and minimum hours and the distinction between casual and part time work.

**Workplace Relations Bill
1996**

National Pay Equity Coalition Proposed Amendments

**Schedule 5
Award provisions**

- The AIRC should, when making or varying award provisions involving maximum/minimum hours for part timers or proportions of different types of employees (including casuals) should take account of the following issues: the need to promote employment; the need for non-discriminatory employment; the need for fair remuneration to support adequate standards of living; the need for career paths; the need for avenues to return to full time employment; the need for predictability of income and certainty of hours

**Schedule 6
Independent contractors**

- Restore existing provisions re independent contractors

**Schedule 7
Unfair dismissal**

- Existing provisions as amended earlier in 1996 should stay
- Delete filing fee requirement.
- Delete awarding of costs against the applicant.
- If costs provisions are not completely removed, they ought at least not to apply in relation to failing to discontinue an application or fail to agree to terms of settlement
- There should be an equivalent level of protection against unfair dismissal for all Australian workers irrespective of federal/state coverage and whether or not their employer is a corporation.

**Schedule 8
Minimum wages, equal remuneration, family carer leave**

- Restore minimum wage provisions, in particular the existing S.170AF(a) & (b)

**Schedule 9
Certified Agreements**

- Restore provisions of existing S.90 Public Interest
- Delete reference to Full Bench requirements for multi-business agreements.
- Remove the limits on application of multi-business agreements.

**Schedule 10
Agreement with employers**

- Extend notice period for 5 working days to one calendar month (5 working days not adequate for continuous shift workers, people on leave.).
- Need to ensure there is access to agreements in appropriate languages
- Provide for specific consultative provisions for women, people from non-English speaking backgrounds, people with work and family responsibilities, and other designated groups
- Require that the interests and needs and views of those groups demonstrably are taken into account

- Restore requirements for consideration of fairness of covering only some employees in an enterprise
- Retain single bargaining unit provisions
- Certified agreements should not override Commonwealth legislation (eg including the Disability Discrimination Act, the Public Service Act.)
- Lower state minima should not replace federal negotiated minima in respect of OH&S, workers compensation, apprenticeships and so on
- The Act should require that a schedule be prepared by the DIR or AIRC comparing award entitlements with those under the proposed certified agreement and that the schedule be provided to employees with the draft agreement, as a requirement for certification
- Majority vote provisions should include the requirement that only provisions it would be lawful to implement can be the subject of a vote. That would mean it would be necessary to ensure that proposed agreements would not be discriminatory in their provisions or in their operation in the workplace
- Remove the provision for certification of agreements which do not meet minimum conditions where the agreements are to deal with "a short term crisis"
- Restore "bargaining in good faith" requirements
- Public interest considerations should apply to dispute prevention and settlement regarding Certified Agreements

Schedule 11
**Australian Workplace
Agreements**

- Overall amendment - AWAs should be filed with the AIRC and registered in the same way as Certified Agreements. Certified Agreements should be used in combination with award minima by the AIRC. Breaches should be handled by the AIRC
- The secrecy provisions regarding AWAs should be deleted
- AWAs must have an expiry date, no open ended option should be permitted
- If an award is updated through the test case provisions, all AWAs should be deemed to be varied to the extent necessary to comply with the new test case provisions, including pay increases through safety net variations
- Upon expiry date, either side should be required to give notice as to their intentions regarding a new agreement. Industrial actions should be permitted. The provisions of the AWA should continue to apply until a new agreement is reached, or otherwise a Certified Agreement.
- AWAs should not be permitted to provide lesser entitlements than CAs or awards applying at the same time in the same area of

coverage

- The EA should be required to provide employees with a schedule comparing existing award conditions with those proposed in the AWA as well as information about anti-discrimination legislation and complaints processes
- The EA should develop a checklist for use as part of the registration process to ensure compliance with the minimum standards
- Required information with lodging AWAs should include details of who is covered (including sex, age, race etc.) and how that relates to workforce characteristics at the enterprise
- Discriminatory AWAs should not be registered

Casuals

- Casual loading should be 20 percent over the award ordinary time provisions, or the award provision if the award is higher, and at least at a rate which fully compensates for all award provisions forgone plus a component for uncertainty of employment

**Schedule 12
Equal pay**

- The definition of equal remuneration, as specified in ILO Convention 100 should be applied and the requirements of the Convention met in the Bill (and not applied across the Bill and Sex Discrimination Act)
- The equal pay provisions should be extended to ensure coverage of all employees, all components of remuneration, and include a right for everyone to take a case in the AIRC irrespective of the form of their employment contract

Reporting

- The requirements for annual reporting on bargaining should be retained and extended to include a specific requirement to report on the effects of bargaining on women, people from non-English speaking backgrounds, young people, part timers and casuals, people with disabilities, Aborigines and Torres Strait Islanders
- If appropriate and necessary, there could be detailed and summary reports in alternate years but not a delay until after the next election for reporting on the new system!

1. THE EFFECTS OF DEREGULATION ON WOMEN

Over the last ten years (The National Pay Equity Coalition), along with a number of other organisations has monitored closely the impact on women as the system of wage regulation has become more and more reliant on enterprise bargaining. One of the problems has been that the more the system has been deregulated at both state and federal levels, the more difficult it has been to get information about the effect on pay and conditions. Indeed one of NPEC's key concerns is that an emphasis on individual, secret contracts will make it virtually impossible to know how women are faring under a new system and for governments to respond accordingly.

Research confirms that enterprise bargaining and individual contracts, as the main forms of decision making over wages and conditions undermines the labour market position of women. Since the Government's proposal is to introduce a much more radical scheme of enterprise bargaining and individual contracts in the federal sphere than exists at present, it is worth setting out the evidence on how women have done so far.

This section provides an overview of women and enterprise bargaining in the federal jurisdiction and provides the results of research on individual contracts in WA and Victoria. It concludes with a brief overview of the provisions to be removed from awards, which are likely to be carried through to individual contracts and enterprise bargain agreements.

1.1 Overview of women's position under enterprise bargaining

A wealth of research and analysis shows that for each level of decentralisation in the industrial relations system, women and low paid workers are worse off. As deregulation is extended, mechanisms for addressing unintended systemic or ad hoc disadvantage are reduced. The compounding effects damage both the current and the future prospects for addressing women's historic labour market disadvantage.

One example of this research is Gillian Whitehouse 1992 study of pay structures in 13 OECD countries and her related PHD thesis which demonstrated that male/female pay gaps are greater at each level of decentralisation and less at each more aggregated level of bargaining. She found that there was a substantial loss of pay equity with a shift from centralised wage fixing to enterprise and individualised bargaining systems, with a difference of 16 percentage points in the pay equity ratio attributable to the level of decentralisation, after accounting for other factors including the level of government employment and union density.

Other international studies concur that decentralised bargaining have resulted in greater income inequalities (Peets, Preston, Docherty, 1992). Rowthorn has shown that under decentralised bargaining, workers in large workplaces do better than those in small ones, where the majority of women are employed.

Together with Australian labour market data which shows the inferior position of those in areas of scant union coverage, limited bargaining power and award protection (outworkers, casuals in small work places, contract cleaners), there is already ample warning that equity and a wages system which distributes bargaining power in favour of employers are not

compatible. *Table 1* sets out the effects on women as the system has become more decentralised and extrapolates the likely effects on women under wholesale deregulation.

The highest pay equity ratio women have achieved in Australia was in 1991 before enterprise bargaining commenced. This ratio of 84.6 per cent of average weekly ordinary time earnings for full time adults, has not been reached since. Despite the general economic recovery, continuing safety net adjustments for those unable to achieve increases through enterprise bargaining (not only the low paid as proposed in the Bill), and other improvements in the labour market position of women including increasing shares of managerial and professional employment the gender pay gap has worsened.

1.1.2 COVERAGE OF ENTERPRISE AGREEMENTS

A key concern is access of women to the enterprise bargaining process. DIR's 1994 Report on enterprise bargaining confirmed that 57 per cent of workers on federal awards were not covered by an enterprise agreement. A smaller proportion of women are covered by federal awards. Most women are in the state jurisdiction, where the spread of formal enterprise bargaining is even more limited. It is safe to conclude that women are far less likely to be in workplaces covered by enterprise bargains and many have relied entirely on across the board or award level wage increases to maintain the value of their incomes.

It is also not unusual for women to be excluded from enterprise bargains. The DIR report revealed that 26 per cent of Part VIB agreements failed to include all non managerial employees at the workplace. The occupations that were most likely to be excluded were clerks and salespersons which are female dominated (DIR, 1995, 41-43)

1.1.3 WAGES

Figures on ordinary time earnings support the conclusion that women's relative wage position has been eroded under enterprise bargaining. By May 1996 after enterprise bargaining had become a key component of the wages system, the female/male earnings ratio fell to 83.3 per cent. This is not surprising given that by 1996 most of the workforce was not covered by agreements and in view of the much lower wage increases achieved by women. The DIR report revealed that 20 per cent of agreements in female dominated industries contained no wage increase at all, compared to five per cent of agreements in male dominated work places.

Despite major deficiencies in available data, the DIR's research also showed slightly lower pay increases for women than men.

1.1.4 CONTENT OF ENTERPRISE AGREEMENTS

The level of wage increases does not say anything about what was bargained away in the process of getting a one off pay rise. The evidence suggests that women have given up a lot more for a lot less, often at the expense of achieving a better balance between work and family and improvements in their career prospects.

Hours

The DIR report showed that 20 per cent of women compared to 14 per cent of men had their working hours increased. Many people were more dissatisfied with their work and family balance (27 per cent) while only 13 per cent reported increased satisfaction. (DIR, 1995, 227)

This dissatisfaction is not surprising given that flexibility in working hours was also much more likely to be based on what managers perceived as suiting the needs of the enterprise. According to Whitehouse's research, negative changes to working hours were more prevalent in sectors where large numbers of women are employed such as retail trade, recreational services and the finance sector.

Equity

work and family

In view of the Government's extravagant claims that individual and enterprise level bargaining will achieve greater flexibility for women, it is important to note that only 17 per cent of agreements contained provisions for family leave and a tiny minority (one per cent) referred to childcare facilities (DIR 1995, 145, ACIRRT, 1993). The family leave provisions which were included often simply restated or repackaged existing entitlements to parental leave, special leave, sick leave and bereavement leave.

career paths

Likewise a study of 77 organisations with state and federal agreements found that there was barely a mention of using equity to improve the position of women. Just three of the 27 organisations which said that they were doing something to advance women's careers were using enterprise bargaining as the vehicle for improving the position of women. (Boreham, Hall, Harley & Whitehouse, 1995) These issues and others such as training are vital for a productive and co-operative workplace.

productivity measurement

The evidence from both Australia and overseas shows that enterprise productivity bargaining is narrowly defined as what can be seen and counted. This does not capture the dynamic, relational and generative nature of productivity, particularly in service sector jobs where so many women find employment. (Junor, Barlow, Paterson, 1993, 2)

sexual harassment

A tiny minority of agreements contained any reference to procedures to eliminate sexual harassment. Complaints about sexual harassment form the largest proportion of grievances to both federal and state antidiscrimination bodies and numerous studies have found that many women are subjected to sexual harassment in their jobs. Clauses on sexual harassment have only recently been negotiated into awards and will now have to be removed to comply with the proposed Bill, leaving women with the unedifying and difficult prospect of arguing for

grievance mechanisms and preventive measures on a workplace and individual basis - simply to retain existing levels of rights protection.

1.1.5 CONSULTATION

The lack of attention given to issues of concern to women and the generally poor deal women have got out of enterprise bargaining is likely to be related to the lower level of consultation with women themselves (Boreham, Hall, Harley & Whitehouse, 1995, 17-18). Their study found that the degree of feminisation was strongly related to total exclusion from the decision making process. Almost a quarter of highly feminised workplaces did not include all staff in decisions compared to no male organisations. The likelihood of reporting no increase in employee participation as a result of enterprise bargaining was much stronger in feminised organisations. The claim that women will have more say under the proposed new system, 'free from the male dominated union movement' is clearly unsustainable, in view of these findings.

The study of Queensland organisations cited previously found a distinct positive correlation between the level of workplace feminisation and the degree of consultation.

1.2 Individual Contracts

Given the evidence of how women have fared under enterprise bargaining, it would be expected that a system of secret and individual contracts is even more detrimental to women.

Since both WA and Victoria have enacted legislation based on individual contracts, information on how women are doing under these state systems should give an clear picture of what we can expect if essentially the same approach is adopted federally.

1.2.1 W A WORKPLACE AGREEMENTS

An exploratory study conducted by ACIRRT of 25 agreements found that in many instances the provisions were less than the relevant award. (ACIRRT 1996) The study, which was carried out for the Trades and Labour Council experienced considerable difficulty in accessing the information. The study examined contracts in retail, hospitality, construction and cleaning and compared them with the following key awards:

- Shop and Warehouse (Wholesale and retail establishments) Award, 1976
- Restaurant, Tearoom and Catering Workers' Award, 1979
- Building Trades, Construction Award, 1987
- Contract Cleaners Award, 1986.

Wages

Wage rates in individual contracts were generally the same as or even slightly higher than base rates in awards. However many conditions have been reduced or eliminated which have an impact on take home pay such as the elimination of leave loading, minimum hours for casual workers and compensation for broken shifts.

Conditions

The contracts removed or downgraded a whole range of conditions which were contained in the award these included:

- annual leave no longer cumulative
- paid morning tea or rest breaks eliminated
- half hour breaks after six hours instead of four
- sick leave not mentioned or not cumulative
- elimination of basic hygiene, safety and first aid provisions.

Working time

The major changes reflected in the contracts was to remove any boundaries around working time which compensate workers for working unsociable hours. Most contracts treated weekend, night or public holiday work the same as Monday to Friday daylight hours work.

It is significant that in the current proposals it is precisely the limitations on employer discretions over shift length and working time arrangements generally which have been removed entirely. Where individual contracts contain penalty rates for working non standard hours, they are usually at a single rate which is lower than that in the relevant award. In some agreements, shift work and overtime are not mentioned. In most agreements the full time weekly hours have been increased to 40 hours or more.

Consultation

Consultation on change and on variation to rates of pay during the life of the contract was not mentioned in any of the contracts. Dispute and grievance settling procedures in most contracts discourage formal pursuit of grievances through applying significant costs for employees.

1.2.2 VICTORIAN INDIVIDUAL CONTRACTS

Jocelyn Bell's study of 116 Agreements made under the Victorian Employee Relations Act 1992 echoes the findings of the ACIRRT study.

Victorian legislation does contain some minimum conditions such as four weeks annual leave, five days sick leave non cumulative, and 52 weeks unpaid maternity leave.

Wages

Only 19 percent of the 116 contracts offered a wage increase, suggesting that individual contracts do not result in higher wages for most people.

Changes related to working hours and the removal of penalty rates also have an impact on pay. Overtime payments were reduced in 34 percent of contracts, and paid at ordinary time rates for 35 percent of contracts. Thirty one percent of the agreements mentioned shiftwork and 26 percent had reduced penalties for shiftwork.

Hours

Like the WA contracts, the focus was on working hours, with 64 percent of contracts paying ordinary time, single rates for weekend work. Most had a 10-12 hour ordinary time spread of hours. The increased spread of hours did not seem to be compensated by an increased hourly rate.

Sick Leave

Sixty three percent of contracts set sick leave at the minimum rate, and made it non cumulative, a reduction of conditions compared to awards with 8-15 days per annum and cumulative. Only 25 percent provide sick leave of more than eight days and cumulative.

Conditions

Overall, conditions have been downgraded with no compensatory benefits to employees.

Few got equivalent to or better than pre-existing award conditions, pay and entitlements, and many employees agreed to conditions that were not as advantageous as those provided under an award. This suggests few new workers have the knowledge and bargaining power needed to negotiate a fair agreement.

Grievances

Fifty percent of contracts had no formal provision for union involvement in grievance issues; Sixty five percent allowed for mediation or arbitration by an outside party and only 25 percent allowed for arbitration when only one party wants it.

These outcomes are particularly serious for low skilled employees entering new employment without a guaranteed set of penalties and entitlements.

1.3 Effects of the proposed Bill on Awards

The inescapable conclusion from examining the content of both enterprise agreements and individual contracts is that the standards contained in awards have not been maintained under these new industrial relations regimes. This is the basis for NPEC's concern about the proposals in the Bill to restrict awards to 20 minimum conditions over which the Industrial Relations Commission can arbitrate.

NPEC has examined three awards in female dominated areas of employment to show the provisions which will have to be removed from awards if the Bill is passed. The awards examined were:

- Community Employment, Training and Support Services Award 1991
- Clothing Trades Award, NSW/ACT
- Retail and Wholesale Employees ACT 1983

The full analysis of these awards is contained in Appendix A.

Local government awards and metal trades awards have also been examined.

In summary the analysis shows that employees will lose as of right entitlements to:

- meal breaks, rest breaks, crib breaks, adequate amounts of rest, maximum hours that may be worked as overtime, rostered days off, rostering requirements including notice provisions, flextime, and length of time between shifts, provisions about working away from home except for wage-related matters
- basic hygiene and safety provisions such as protective clothing and footwear, first aid kits in the workplace, amenities and facilities (hot and cold water, toilets, lighting, seating, rest rooms)
- consultation provisions such as those regarding technological change, structural efficiencies; boards of reference; provisions on negotiation of agreements
- maximum and minimum periods of engagement for part timers and casuals
- limitations on contract and casual work; limits on outworkers; terms of engagement for outworkers
- accident make-up pay, provisions about how wages are to be paid, superannuation
- skills based progression, annual increments, translation processes from old to new award classifications, flexibility of work and mixed functions clauses
- security of employment provisions; appointment and promotions processes; redeployment processes
- documentation provisions - eg providing copies of awards for employees, employee records, posting of union notices; registration of outworkers; time-books, sheets and records
- training provisions, study, exam, trade union training, conference leave; blood donor leave
- union right of entry, union preference, shop steward rights
- uniforms and uniform laundering and maintenance; supply of tools of trade.

On the basis of the evidence presented in this section, the table at Appendix B shows how each level of decentralisation has adversely affected women and draws some conclusions on how the Bill is likely to affect women in if the proposed Bill goes ahead.

This section has provided an indication of the key concerns if the Industrial Relations Bill is passed. The next section examines the Bill clause by clause and identifies areas of specific concern.

2. AREAS OF CONCERN IN THE WORKPLACE RELATIONS BILL

The following section identifies specific areas of concern for women in the proposed Bill. It includes recommendations on how the Bill could be amended to limit some of the most deleterious effects.

2.1 OBJECTS

s.3 OBJECTS Emphasis on the enterprise and on productivity
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2.1.2 PRODUCTIVITY

An entire focus on productivity as the key determinant of wages and conditions is based on the assumption that the direct link between productivity and individual bargaining. A more deregulated labour market does not necessarily lead to increased productivity. It does provide employers with an incentive to cut labour costs and thereby make short term productivity gains. However, there is a limit to cost cutting and an exploited labour force may feel demotivated and unwilling or unable to participate in the measures needed to address the underlying causes which make an enterprise unproductive such as training, team building, improved customer service strategies and research and development leading to better products and client services.

2.1.3 PROMOTION OF EQUITY AND LINK WITH PRODUCTIVITY

Fair wages, based on skill, effort and performance are important for creating equity. A system must be transparent for people to have confidence that they are being treated fairly and justly rewarded for their efforts. Unfair treatment has seen many women "vote with their feet" leaving professional jobs (eg in law and accountancy) and management jobs, thereby downgrading the skills pool and undermining allocative efficiency in the labour market.

2.1.4 COST OF LIVING

An entire focus on productivity does not account for the needs of workers to meet their living costs. Productivity is not easily measured in many areas at work which are not done for profit such as nursing or where the workers contribution to profitability is not readily identifiable such as clerical workers. This particularly affects women. There is a lot of data on increasing income dispersion and the widening gap between cost of living and wages income, including work by the National Centre for Social and Economic Modelling. Distributive unfairness including underpaying women for their productive work increases retirement income and other social security and infrastructure costs. These issues and specifically the inefficiencies in the labour market brought about by inequity have been discussed in the NSW Government's (Niland) Green Paper 1989.

2.2 THE EMPLOYMENT ADVOCATE

THE EMPLOYMENT ADVOCATE

s.83 BB(g) Function of providing free legal representation for Part VID or Part XA only where the EA considers this would promote enforcement of the provisions of the Act

s.83BC The Minister can direct the EA on how to carry out functions

s.83BD The EA staff are employed by DIR

s.83BE(2) The EA's advice and information functions can be delegated to anyone (including people outside the public service) and are then carried out under direction (3)

s.83BO(1) The Governor General may terminate the appointment of the EA for "...incompetence or inefficiency".

s.83 BS(1) Prohibits disclosure of information identifying AWA parties. The prohibition applies to those acting under delegation.

2.2.1 LIMITATIONS ON LEGAL ASSISTANCE

The EA is not required to provide free legal assistance to everyone who makes a complaint. There is a discretion and whether "this would promote enforcement of the provisions of the Act". This suggests that not all cases will be taken and that cases might only be taken if they clarify the meaning of the Act or establish some principle. It is not clear that lower wage rates or reduction of conditions to when the employee did not agree will be accepted as cases. If an employee is sacked for not agreeing or does not get the job would this be investigated?

The EA is not independent. The EA can be directed in carrying out his/her functions by the Minister and the staff are public servants provided by the Secretary of the DIR. The provision that the EA can be sacked for "incompetence or inefficiency" is another control mechanism inhibiting the independence of the EA. By contrast, AIRC staff are free of political control by the Government after they are appointed. It is not hard to imagine circumstances in which the EA could be dismissed because his/her approach to the role was seen as too thorough, and too costly; or too public; or too even-handed in warning people of potential problems with AWAs. The role can have no credibility while it is subject to direct Ministerial control and direction.

2.2.2 QUALITY OF ADVICE

The EA's advice and information functions can be delegated to anyone. Unless this is carefully scrutinised, there may be very uneven and sometimes inadequate quality of advice provided. This could mean that the important role of the advice and information functions in ensuring agreements are based on informed consent are carried out. Delegation from the EA also brings the requirement not to divulge details of AWAs so the secrecy net could be cast quite widely.

2.2.3 NO EXTERNAL SCRUTINY - INFORMATION WITHHELD FROM PUBLIC

The secrecy provisions regarding AWAs clearly mean it will be very difficult for there to be effective external scrutiny of the operation of the AWAs. In WA and Victoria, as in NZ, it has already been very difficult to see how agreements work and who they affect in what ways - both good and bad effects. This is problematic for public interest in the legislated scheme of

industrial regulation and in the accountability of government to the electorate for the success or otherwise of its legislation in this highly contested area of economic and social life.

Individuals also will find it much harder to obtain the information they would need to make informed decisions about their position in the labour market.

2.2.4 LEVEL OF RESOURCES FOR EMPLOYMENT ADVOCATE OFFICE

The volume of inquiries about awards is already very high (around a quarter of a million a year) and increasing and can only be expected to rise further. There are already significant delays and backlogs in dealing with award complaints. Key areas of complaints of award breaches include vehicle industry (repair, service and retail) and hospitality (hotels, motels, clubs) and the metal industries.

Complaints are often complex and protracted which results in a great proportion of them being discontinued. Lodging complaints after breaches of industrial entitlements have occurred is a very poor last resort for employees in securing their entitlements and frequently even where cases actually do proceed they are unsuccessful.

2.2.5 COSTS OF COMPLAINTS

There is nothing in the existing system of handling award complaints which would allow anyone to be sanguine that a system of complaints through the EA would protect workers' entitlements, particularly in view of the much greater number of industrial instruments likely to be involved and the resulting increase in specificity of conditions and uncertainty of application. There is a particular concern since there is actually no guarantee at all that free legal assistance will be available from the EA, leaving an individual complainant with the burden of taking their own legal action. Recoverable amounts often would not justify paying legal fees if an employer chooses to oppose a claim - even where employees had the know-how, language skills and rights consciousness to pursue the claim. It is very likely that few employees will actually seek (and even fewer obtain) redress through the EA or private legal action. This is a serious defect in the scheme, especially since there will not be checking of AWAs before they are registered.

2.2.6 LACK OF INDUSTRIAL EXPERTISE WITHIN COMMON LAW SYSTEM

The provision for complaints to be dealt with in courts which do not specialise in industrial matters means that there is a greater likelihood of matters being dealt with inadequately and inconsistently. Complainants will face a greater burden in preparing and presenting their cases. In NSW, the practical difficulties of dealing with industrial complaints in non-specialist courts led to the retention of the Chief Industrial Magistrate by the then Coalition Government.

2.2.7 SERVICE GUARANTEE REQUIRED

The EA should be required to publish a Guarantee of Service (GOS) setting out performance standards including waiting time for dealing with inquiries and complaints, commitment to

providing advice and assistance in appropriate languages and formats etc. The GOS should be the basis for determining the funding the EA would need to provide an adequate service.

2.2.8 ADEQUATE TRAINING

The EA should be required to ensure staff are adequately trained to provide advice and information for members of disadvantaged groups. Provision will have to be made for translators to be employed and/or funded and for EA services to be widely available at local level (perhaps through contracting with community organisations eg Working Women's Centres, Migrant Resources Centres, Youth Access Centres etc).

2.3 AWARDS

AWARDS

s.88A(b) Awards are confined in their scope to providing a minimum safety net.

s.88B(c) Directs the AIRC to the needs of the low paid when adjusting the safety net.

s.88B(g) Defines equal pay not equal remuneration.

s.89A Limits the matters which may be the subject of an industrial dispute or of an award or variation of an award to a specified list.

s.89A(3) Restricts the AIRC to making minimum rates awards.

s.89(4) Excludes the AIRC from including proportions clauses (eg adult/junior, full/part time/casual) and from setting maximum or minimum hours for regular part timers.

s.106(2) Provides that awards can be made and varied only by the Full Bench unless the award contents are consistent with Full Bench principles or apply Full Bench determinations.

s.111AAA Provides that the AIRC is to cease dealing with an industrial dispute where a state award applies unless that is not in the public interest (defined as the views of employees, employers and the history of their employment regulation).

s.113B(4) Requires that unions can only be heard on an application if they have affected members.

s.143(1B)(a) Requires the AIRC to ensure decisions or determinations do not include matters of process or detail more appropriately dealt with at the workplace level and (b) does not prescribe work practices or procedures inhibiting efficiency.

s.143(1C) Requires the AIRC to ensure a decision or determination (a) contains facilitative provisions on application of the award, (b) is in plain English and easy to understand in structure and content, (c) does not contain obsolete provisions, (d) has training wages and supported wage system for people with disabilities and (e) does not discriminate (except regarding junior rates, inherent requirements of the job or in relation to staff of a religious institution on the basis of teachings or beliefs and in good faith)

s.152(2) and (3) An award is not binding where there is a state agreement made before or after the award.

s.152A Provides that a corporation bound by a federal award is not bound by a state one unless it applies to be bound. When federal award provisions are displaced by the Item 44 process, this provision prevents application of the previously displaced state common rule award provisions unless the corporation has applied to be bound by the state award.

2.3.1 THE AWARD SYSTEM GENERALLY

The award system has been a key protection for the most disadvantaged workers in Australia, and these proposed moves to undermine it necessarily mean their level of disadvantage will increase, with a rising level of income dispersion and the likely emergence of "the working poor" who have so far in Australia been a relatively small proportion of the workforce (unlike in the US and the UK).

Safety net

The safety net in relation to wages is specifically focused on the low paid. This is likely to mean that employees who are in a weak position to negotiate good agreements but who are not low paid at present will become so. This is particularly likely to apply to public sector workers below the senior levels where contracts are likely to be increasingly prevalent. It will also apply to high skill poorly unionised employees generally.

Limitation to arbitrate

The limitations on the AIRC's ability to arbitrate above the safety net means that award standards will fall and become increasingly irrelevant. Removing the requirements for awards to provide secure and relevant wages and conditions clearly signals an intent to reduce the significance of awards. The consistency requirement is in part addressed by the s.88B(2)(d) provisions regarding relativities. What has been lost is the requirement that awards provide a secure employment framework at levels other than the safety net and other than oriented specifically to the low paid.

Danger of inflationary pressures

If low paid workers receive only minimal safety net increases while pay increases not fully compensated for by productivity increases are obtained in agreements by higher paid workers, inflationary pressures and/or fears about inflation are likely to result in falling levels of safety net increases for the lower paid. The AIRC will not be able to block increases in AWAs or certified agreements on the basis that they are not productivity based.

It is well known that the costs of market failure fall heavily on poorly organised parts of the labour market - because of poor market information, constrained choice, strategic market location.

Limitations on awards

Significant limitations are proposed for the matters awards can deal with, the areas in which legislated or other standards must be met, the level and type of award variations the AIRC can approve and the circumstances under which an award can be established.

There is a contradiction here between the claim that the industrial relations system is to allow employers and employees to choose the nature and jurisdiction of the legal relationship they

wish to enter. Indeed it appears that employees and employers are free to choose their legal relationship - unless they choose awards and union representation in negotiating them.

Conditions likely to be lost

Many employees will not be able to re-negotiate conditions removed from awards (because they fall outside the specified areas) into enterprise agreements, especially where they are employed in industries with a large number of small workplaces. The DIR's 1995 report on enterprise bargaining showed that smaller workplaces did have difficulties in negotiating agreements partly because they are less likely to be represented by unions. This is especially the case in industries characterised by high levels of part time and casual workers, many of whom are women.

The allowable matters scheme appears oriented to retaining rates for certain types and arrangements of work while not providing for a range of provisions about how work is to be done and arranged in specific areas and types of work. This is particularly so when the allowable conditions are looked at together with the provisions prohibiting coverage in awards of matters which would be better dealt with in agreements or which would inhibit productivity.

The existing awards generally are as they are because the parties have negotiated and agreed them that way, except where there has been a dispute and the AIRC has set down provisions in settlement of it. In many cases, the specific and sometimes apparently idiosyncratic provisions of particular awards are essential for efficient operation of an industry or some part of it - as was evident to both employer and employee participants in s.150A award reviews.

In some instances, existing award provisions are the result of bargaining for conditions which are outside the new specified minimum conditions and for which pay rises have been traded or foregone. Those award parties now face a double jeopardy in foregone money and conditions.

2.3.2 MATTERS NOT ALLOWABLE IN AWARDS

2.3.2.1 Overtime and penalty rates

While overtime penalty rates are included in the allowable conditions, other highly significant matters such as provisions about the level of overtime which can be required and the conditions under which overtime is to be worked appear to fall outside the provision. Thus provisions such as limiting a requirement to work overtime where the person has already worked six out of seven days, would not be allowable. Nor would minimum call-out provisions - although perhaps minimum pay rates for certain types of overtime shifts would be allowable. Maximum limits on overtime would not be an allowable provision.

2.3.2.1 Higher duties and mixed functions

It is unclear whether allowances for doing higher level work (higher duties etc) or extra duties (without being reclassified) would be allowable. Thus, while a rate would be set for a classification, if the person doing the higher level work is not technically classified in the classification they might not be entitled to the higher rate of pay.

2.3.2.2 Occupational health and safety

The exclusion of occupational health and safety from allowable award conditions and from the matters which can be the subject of an industrial dispute means that regulation of occupational health and safety will be state-based, and so will vary from State to State, whereas the existing award framework provides coherent nationally applicable provisions. It is hard to see why it is efficient to require that organisations who do not wish to should be subject to the variation across state OHS systems when they could better utilise federal award provisions as they have in the past.

A wide variety of award provisions deal with occupational health and safety matters which are highly specific to a particular industry (eg eradication of asbestos provisions). Similarly, awards contain many provisions about provision of uniforms, equipment, amenities, sanitary and washing facilities, provisions about when and how wages are to be paid, etc which apparently would not be allowable matters.

2.3.2.3 Superannuation and long service leave

Superannuation is a matter not allowable in awards, presumably on the basis that it is dealt with in legislation. Exclusion of these entitlements means both that the award scheme is not transparent - employees and employers cannot know the full scope of the award merely by looking at it - and that in some areas where existing award entitlements exceed the legislative scheme, that will be excluded from the award and may disappear if another means of protecting it cannot be found (with all the expense and trouble of that). The references to long service leave in terms of existing awards only presumably signals the intention to eliminate long service leave entitlements over time.

2.3.2.4 Equal pay and superannuation

Removal of superannuation from allowable award provisions removes a remedy in relation to discrimination and, in combination with the proposed equal pay amendments confining equal pay to pay rather than remuneration, also removes an equal pay avenue and remedy. Under the existing provisions, sex discrimination in superannuation in awards is addressable directly by the AIRC, or through lodging a complaint with the Sex Discrimination Commissioner who would then refer the matter to the AIRC if she found the discrimination proven. In View of the downgrading of discrimination provisions and definitions in the Bill, this subjects complainants in relation to discriminatory aspects of superannuation schemes to the much more cumbersome requirements of individual or group complaints through the Human Rights and Equal Opportunity Commission and probably through the courts.

2.3.2.5 Paid rates

Abolition of paid rates awards will involve significant disadvantage to women in the public sector. It is public sector employment which actually keeps up to a relatively high level the pay equity ratio in Australia. If the public sector pay equity ratio drops to the level in the private sector (where women working full time earn 76 percent of men's earnings, compared to 86 percent in the public sector) Australia will slip well down in its international position on this issues.

Disadvantage will occur even with a guarantee that there will be no downgrading of pay and conditions with the transfer from paid rates awards to minimum rates awards. That guarantee applies for now. It would not take long at all in a deregulated environment as is laid out in the Bill for public sector pay and conditions to fall behind.

The industrial environment will clearly be hostile to maintaining - let alone improving - public sector pay and conditions as the Federal Government continues to abolish public sector jobs, functions and organisations.

While public sector workers have relied on general safety net increases where they have been unable to negotiate enterprise agreements, the focus of safety net increases on low paid workers means they will no longer have even the minimal level of protection there was under the previous legislation. In the medium term this means public sector workers will be increasingly underpaid for the level of skill, knowledge, effort and responsibility of the work they do. In the longer term it will progressively downgrade the quality of labour attracted and retained in the public sector.

Paid rates provisions in minimum rates awards will also fall outside the allowable provisions. Provisions stating that employees cannot be paid less than a certain set amount, which often apply to protect the lowest paid classifications, will be deleted. This will also mean that additional payments prescribed in lieu of over-award payments will not be permissible.

The specification of a separate part of the paid rate as the market component is quite an artificial process since there is not a comparable private sector market for many types of public sector work. The Government as an employer has much greater market power to hold down and reduce entitlements. It may be extremely difficult for public sector workers to get enterprise agreements at all, or except on a cost-cutting, trade-off basis. Safety net pay rises are unlikely to be available to public sector workers and their earnings are likely to decline in relative terms.

2.3.2.6 Limitations on varying an award

The confined definition of "industrial dispute" means that the role of the AIRC is significantly reduced in the areas in which awards can be made and varied. That means that in more and more areas of employment, standards are not set and/or scrutinised by any independent body. Equal pay and discrimination are not included in the list of matters which can be the subject of an industrial dispute.

2.3.2.7 Maximum and minimum hours for part timers; proportions of types of employee

The specific limitation on the AIRC including proportions clauses or maximum and minimum hours provisions for part time workers appears at odds with the concept of allowing employers and employees to reach agreement on what is needed in their own industry, except through certified agreements and AWAs. It may well be that some provisions included in awards are needed throughout the industry and it is an expensive, time-consuming requirement that they must be negotiated into agreements rather than retained in the award.

Casualisation permitted

While some awards have safeguards to prevent changing employment status of existing employees (eg from regular to casual), some do not. The existing limits on casual (or other types of) employment have protected existing employees from being made casual, and have often been a safeguard in the absence of rigorous definitions. Many awards simply say a casual is someone employed and paid as such. But that does not correspond to the interpretation of casual employment by industrial tribunals which have examined it and have considered matters such as regularity or duration of employment.

The only safeguard for existing employees from being transferred to casual employment, and for new employees being employed as casuals, will be what can be drawn from the definitions of "casual" in some awards. The award definitions of "casual" are very loose in some awards and non-existent in others. Employers who want to casualise their workforces will find it very easy to do so. In some industries, they may soon be very little full time work at all.

Already, ABS statistics show that many part timers want to work more hours than they can and many workers have to have two or more jobs to make ends meet.

No minimum hours

The prohibition on setting minimum hours for part timers can mean that employers can be made to work for very small periods of work, so their total pay barely compensates for their travelling, childcare and other work related expenses. Women who are in a very vulnerable position in the labour market may nonetheless be prepared to do so for fear of losing their jobs in the fluctuating labour market we now have. Overall, levels of employment are likely to fall as employers tailor employee hours very closely to fluctuations in demand.

Intensification of work

Existing trends to intensification of work are likely to be exacerbated. It can be expected that even more areas of employment will become largely or wholly part time, particularly areas where work stress is very high. Having an increased number of shorter-hours employees is likely to be used as an inadequate and inappropriate alternative to addressing and improving work pressure, work practices and work loads.

Regular part-time work

There are no requirements for rostering part timers for a set number of hours per week and to ensure rosters are not changed on a daily basis. In effect, part timers will be treated as casuals without being paid the casual loading. The most important thing for workers with family responsibilities is certainty about working hours so suitable arrangements can be made for care of children and other family members.

If the legislative intent is to direct attention to certain aspects of proportions clauses and maximum and minimum hours provisions - perhaps whether they involve restrictive practices or bring about discrimination, it could be more appropriate to require the AIRC to take

account of those matters or to set specific procedures for dealing with those matters rather than set a total prohibition on how industrial disputes can be prevented or settled.

Issues about part time work including maximum and minimum hours provisions were canvassed at some length in the recent *Personal/Carer's Leave Test Case* and certain principles were set by the AIRC, providing a scheme for what issues should be dealt with at award, enterprise and employer/employee level. Those principles did distinguish part time from casual work particularly by setting a minimum hours level. It would be appropriate for that decision to be the basis for legislation in this area since that Test Case Decision was based on extensive consideration of the arguments of a very wide range of organisations.

2.3.2.8 Getting and keeping federal awards

The provisions relating to state jurisdictions impose constraints on how the industrial parties structure their industrial relations. The requirement that the AIRC cease to deal with an industrial dispute where a state Award exists (except in the public interest), the provision that a state agreement overrides a federal award and the provision that even where conditions are removed from federal awards the state common rule awards do not fill the gap (unless a corporation has applied to be bound by the state award) all operate to restrict the industrial options of the parties and to alter long-standing federal/state arrangements.

It will become harder for currently award-deficient areas to achieve federal award coverage under this legislation. It has already been extremely difficult and has taken many years to achieve award coverage in community services (despite the national character of employment and programs) and the coverage still is very limited and now facing further obstacles.

Abolition of federal award system by stealth?

Provisions that state agreements override federal awards means that the federal award system can virtually be abolished by state agreements to which very few minimum standards apply and which can be reached without the involvement of arbitral bodies.

In Victoria, the minima applying to agreements are: ordinary hourly/weekly rate under the expired (March 1993) award; 5 days (non-cumulative) sick leave; 4 weeks annual leave (without loading); 52 weeks unpaid parental leave. There is no entitlement to penalty rates or allowances, or any limit on the spread of hours or the period of minimum engagement. Agreements have often set sick leave at the new minimum rather than the previous award entitlement of eight or more days and have often made the entitlement non-cumulative although many awards provided for cumulative entitlements. Grievance procedures set under the new agreements often have deleted the entitlement to any external arbitration. Overtime is often being paid at lower rates. "Flexible" work arrangements including extended span of hours and non-standard hours were introduced without much or any compensation.

These conclusions are based on Jocelyn Bell's *Preliminary Analysis of 116 Agreements* made under the *Victorian Employee Relations Act 1992*. They echo the findings of the ACIRRT study, *Understanding Individual Contracts of Employment: An exploratory study of how 25 workplace agreements compare with relevant award entitlements* carried out for the Trades

and Labor Council of West Australia, February 1996. In both studies, researchers comment on the great difficulty of studying agreements not required to be made public.

(These studies are summarised in sections 1.2 and 1.3)

2.3.2.9 Union involvement restricted

The requirement that unions are only heard on award matters if they have members imposes extra procedural requirements for unions to establish that they do have members in the areas covered by the awards, at the very least. Even where the evidence of this is to be provided to and held in confidence by the Registrar, there is a real risk of victimisation of union members whose names are put forward in evidence of the union's right to be involved in an award matter since it will be clear that employees in the particular workplace have requested union assistance.

2.3.2.10 Restriction on AIRC's decisions

The requirement that the AIRC ensure decisions or determinations under s.143(1A)(1) not include matters more appropriately dealt with at the workplace level, or prescribe work practices or procedures that restrict or hinder the efficient performance of work may allow even further stripping down of awards by allowing a very great discretion to the AIRC, depending on the principles by which these decisions are made. The AIRC is not directed here to take account of and give weight to the views of the parties that the matters ought in fact to be dealt with in the awards.

2.3.2.11 Training not included

Training is not included in the allowable award conditions. This is particularly problematic since considerable effort has been put into expanding training provisions in awards as part of the national effort to become more competitive over the last few years. As part of the training reform agenda and award restructuring to introduce skill based classifications, there has been increasing definition of jobs in terms of competencies and training requirements. These matters have been pursued, in many cases, at the expense of wages and conditions as part of a more far-reaching effort to become more highly skilled and improve productivity. It seems particularly invidious that these initiatives are not only no longer required, they are in fact prohibited from inclusion in awards and the gains made can no longer be preserved.

It is no answer to this to claim that training and classification matters can be as well addressed in agreements. Analyses of coverage of training issues in certified agreements have clearly shown that coverage has been very limited and generally confined to broad statements of support for and commitment to training rather than specification of jobs, career paths and related training.

The exclusion of training from allowable award matters is also objectionable from an equity perspective. Over the last few years, the importance of language and literacy training as promoting productivity and as providing opportunities for advancement of people from non-English speaking backgrounds has only begun to be recognised in awards, providing specific entitlements to training.

The absence of training from the list of allowable award matters also means provisions about study leave, allowances and reimbursement for study related expenses are excluded.

The absence of those provisions from awards will mean that the training will not be available in areas where workers are not industrially powerful enough to negotiate inclusion of the provisions in agreements. The workplaces where agreements cannot be negotiated are most likely to include concentrations of workers most in need of training and education.

Experience of enterprise bargaining to date does not indicate any great record of success in including language and literacy provisions in agreements and there is certainly nothing about the even more deregulated system proposed which makes it any more likely in the future that those provisions would be included.

2.3.2.12 Other provisions excluded

Other excluded conditions include rest periods, shift breaks, protective clothing, tools, equipment, introduction of change, disciplinary proceedings, redeployment processes, provisions about distant work, fares and travelling time, consultation, minimum call-out provisions and conditions relating to allowable overtime rostering. Oddly, in view of the Government's rhetoric about promoting flexibility in employment, provisions about the flexible arrangement of working time (eg flexitime, RDOs) cannot be included.

2.3.2.13. Anti-discrimination provisions downgraded

The allowable award conditions can include a model anti-discrimination clause as a matter incidental to the operation of the award. The current model anti-discrimination clause was negotiated and agreed by employer organisations and unions as part of the s.150A award review pilot. It was agreed that the clause would be inserted in all awards. The clause was developed as part of the process of providing mechanisms for dealing with indirect discrimination which arises from the operation of the award at the workplace rather than being present as direct discrimination clearly identifiable from the award provisions. The model clause represented real progress in dealing with indirect discrimination and provided a much more accessible mechanism than using the discrimination tribunals, allowing the discrimination problem to be addressed at the workplace at the level where it occurred.

Since the current legislation also includes provisions prohibiting discrimination and includes award review processes, inclusion of the model anti-discrimination clause should be a required part of the award review process.

2.3.2.14 Sexual harassment

In the light of the proposed provisions regarding prohibiting discrimination, it is odd that EEO and sexual harassment provisions cannot be included in awards.

2.3.2.15 Inclusion of necessary other conditions through special cases?

At the very least, the Act should provide for special cases that extra conditions can be included in awards where that is necessary for the efficient operation of an industry, or for fair employment practice.

2.4 Award reviews

Part 2 Transitional provisions sets out how awards are to be dealt with over the next 18 months before the award restrictions automatically apply. The AIRC will also review awards to ensure they do not include matters of process or detail more appropriately dealt with at the workplace level and (b) do not prescribe work practices or procedures inhibiting efficiency. Sub-item 6 requires the AIRC to ensure a decision or determination (a) contains facilitative provisions on application of the award, (b) is in plain English and easy to understand in structure and content, (c) does not contain obsolete provisions, (d) has training wages and supported wage system for people with disabilities and (e) does not discriminate (except regarding junior rates, inherent requirements of the job or in relation to staff of a religious institution on the basis of teachings or beliefs and in good faith).

Item 44 provides that award matters outside the allowable matters cease to apply.

Item 45 Requires the AIRC to review each award affected by Item 44.

Item 46 Provides for the Full Bench to set principles for varying awards and provides that otherwise variations are only to be dealt with by the Full Bench.

2.4.1 DISCRIMINATION IN AWARDS

The provisions about award reviews and award "simplification" now do not include referral of discriminatory award provisions to HREOC. The AIRC is no longer required to address discrimination if it finds it, only to "take whatever steps it considers appropriate". The exception from the discrimination provisions of "inherent requirements of particular employment" falls below the ILO requirements in relation to the Discrimination Convention. It has been made quite clear in the preparatory papers and debates that the ILO rejected the concept of inherent requirements of a particular type of work in favour of inherent requirements of a particular job.

If the provisions regarding award "simplification" are passed, it should be required that existing award provisions not included in the allowable matters be available for inclusion in a certified agreement on the basis of a purely formal application to the AIRC (rather than having to be re-negotiated). This would make the move to a different system possible without reducing the existing conditions as the starting point.

2.4.2 LIMITATION ON REVIEW PERIOD

Limiting the award review period to 18 months will mean that some matters will be removed from awards which actually fall within the allowable provisions, since there will not have been thorough reviews of all awards and in many awards allowable and non-allowable matters are closely intertwined. This may mean that people are unlawfully deprived of award protections and entitlements because of employers interpretations of the allowable conditions, which subsequently are not upheld by the AIRC. It may also mean that wrongfully removed

conditions will have to be restored and compensation provided although the legislation does not address these matters at all.

There should be an Annual Report on developments in the award system, including progress in award simplification, action on award breaches, new awards, award coverage and changes in it (including federal/state changes), levels of safety net increases, detail of any Test Case provisions.

2.5 Repeal of independent contractor provisions

Schedule 6 repeals coverage of independent contractors.

Repeal of independent contractor provisions may have effects for conditions for outworkers. The basis on which this is said to be done is that the *Trade Practices Act* (TPA) provisions adequately address the protection of contractors. However, s.52 of the TPA applies only to misleading or deceptive conduct which is narrower than harsh or unreasonable contracts. The TPA provisions would in any case only apply to corporations (as do the current IRA provisions).

The recent Senate Committee hearings in relation to outwork in the clothing industry show a need for greater protection for independent contractors rather than any basis for reducing the current inadequate level of protection.

Other areas in which substantial number of women work as contractors include cleaning, childcare and some areas of clerical work.

2.6 Termination of employment

TERMINATION OF EMPLOYMENT

Schedule 7 provides for the AIRC to exercise powers dealing with termination of federal award employees under State laws. The Schedule generally provides coverage for federal award employees, federal public sector and Territory employees, employees of corporations, waterside worker, maritime employees, flight crew. Subsection 170CB(4) (calling up the external affairs power) will not operate where state legislation confers powers to deal with terminations on the Commonwealth.

s.152(4) Provides that federal award provisions dealing with termination do not override state laws or awards providing remedies for termination

s.170CC Provides for certain employees to be excluded from coverage regarding termination including short term casuals, probationers, fixed time contractors

ss.170CF and CG Provides for AIRC both to conciliate and to arbitrate

s.170CH(9) limits compensation for dismissal to \$30 000

s.170CJ provides that the AIRC can order payment of costs by an employee for an application which is vexatious or without reasonable cause

s.170CK(f) Prohibits termination on discriminatory bases (with some exclusions)

s.170CQ Requires the employer to show that the dismissal was not for a proscribed reason rather than requiring the employee to show it was

s.170CR(1)(a) Provides for a fine of \$10 000 for an employer unlawfully terminating someone's employment

Major issues of concern are the imposition of filing fees and possible awarding of costs against an applicant which will impose great barriers to poorer employees - who have in fact been significant users of the existing federal regime.

The provision for excluding certain classes of employees will further reduce the application of the provisions.

The AIRC can order costs against someone it considers has unreasonably failed to discontinue an application to deal with termination, or against someone who the AIRC considers has behaved unreasonably in failing to agree to terms of settlement which could lead to the discontinuing of the matter before arbitration.

According to recent research, women are already under-represented in applications under existing unfair dismissals provisions. R.B. Winten's M.A. thesis, *Unfair dismissal: the applicants*, showed that while women are 78 percent of clerical workers, they lodged 41 percent of applications. Women are 64 percent of the sales workforce but lodged only 50 percent of applications.

The proposed provisions would have the AIRC exercising legal and administrative powers in relation to unfair dismissal. This has been found in the past to be unconstitutional.

There should be an equivalent level of protection against unfair dismissal for all employees irrespective of federal/state jurisdiction and whether or not their employer is a corporation. If necessary the provisions should rely on the external affairs power.

2.7 Minimum wages and equal remuneration provisions

SCHEDULE 8 - Minimum wages, equal remuneration, family leave - repealed

Comments on equal pay in awards, certified agreements and AWAs are included together at 2.13.

2.8 Certified agreements

SCHEDULE 9 - CERTIFIED AGREEMENTS

S.135(2A) Requires agreement by a valid majority and provides for the AIRC to order a secret ballot (s.170LE defines a valid majority as a majority of those casting a valid vote where all those whose agreement would be subject to the agreement have a reasonable opportunity to decide)

170LA(2) AIRC not required to take account of the public interest in performing its functions under this part.

s.170LC(3) Only a Full Bench can certify a multiple business agreement.

s.170LC(4) Full Bench can only certify multiple business agreement if it is in the public interest and matters would not be more appropriately dealt with by some other agreement under this part.

s.170LC(5) Multiple business agreement does not prevail over other certified agreements but does prevail over awards and other multiple business agreements.

Division 2 covers employees of the Commonwealth and of corporations.

s.170LI requires agreement in writing by all employees.

s.170LJ requires organisations making agreement to have members in the enterprise.

s.170LJ(3) Requires ready access to the agreement in writing 5 days before approval.

s.170LJ(4) requires an agreement must not be made under this part if it could be made under a greenfields agreement provisions (s.170LL).

s.170LK requires that for an organisation to represent an employee it must be requested by members.

s.170LT(2) requires that the agreement must meet minimum conditions.

s.170LT(3) provides that the minimum conditions relating to wages can be met on the basis of meeting it for employees of a particular kind.

s.170LT(4) Agreements not meeting minimum conditions must be certified if they are part of a reasonable strategy for dealing with short term crisis and it is not against the public interest.

s.170LT(9) Maximum term is 3 years.

s.170LU(4) AIRC must not certify discriminatory agreement (with exclusions)(s.113A provides for termination or variation of discriminatory agreements).

s.170LY Certified agreement prevails over awards or orders but not over another current certified agreement.

s.170LZ CA(1) prevails over state law, award or agreement except in relation to (2) state laws or agreements relating to occupational health and safety, workers' compensation, apprenticeship or other matters prescribed by regulation and (3) provisions relating to termination.

s.170LZ(4) CA displaces Commonwealth laws dealing with conditions as provided in regulations.

s.170M(1) CA binds anyone whose employment is subject to the agreement at any time.

s.170M(3) Organisations (with at least one member) can apply to be bound by CA.

s.170MJ Requires certain particulars to accompany notice of bargaining period including where, to whom and for how long the agreement would apply and its proposed content.

s.170NB Employer must not discriminate in negotiating an agreement between members of unions or between members of one and another union.

Transitional provision that reporting requirements of s.170RC apply in relation to reporting period ending 31 December 1996 despite repeal.

2.8.1 CONSULTATION REQUIREMENTS

Consultation requirements are abolished. The regulations relating to satisfying those requirements included providing data on women, migrants, young people, people with disabilities, Aborigines and Torres Strait Islander people will no longer exist. There will not be a clear ground in the Act for gathering this information. The staff of the Industrial Registry is being cut so their information gathering and analysis is likely to be minimised.

The current provision require account to be taken of the interests of specified groups, and require them to be informed about the agreement, to be consulted and to be identified with

information provided about how they had been consulted and informed about the agreement. The AIRC is required to take action to remedy failure to consult.

The proposed provisions require only that reasonable steps are taken to ensure people have copies or access to copies of the proposed agreement. This does not require at all that the views and interest of employees are taken into account, only that they know what the agreement says and that a valid majority genuinely approve it. The proposed provisions do not in any way recognise the difficulties disadvantaged groups in the labour market face in a bargaining relationship essentially characterised by very great power imbalances.

2.8.2 UNION INVOLVEMENT; EXCLUSION OF TYPES OF WORKERS

Requirements for all unions respondents to the award covering the business to be party to the agreement abolished. This has meant that unions have been encouraged to form a single bargaining unit, thus simplifying negotiations with employers and discouraging narrow, sectional interests. Together with the waiving of restrictions on covering only some employees in an enterprise. This also allows that, for example, the clerks in an enterprise to be excluded from an agreement while the production employees are covered. This problem occurred even with the previous legislative provisions and can be expected to become far more widespread under the proposed new Bill. It brings particular problems for less industrially powerful parts of the workforce who miss out on pay increases. Even though their work contributes to enterprise productivity, the productivity measures are often too crude or simply too biased to reflect the value of their work and they do not have sufficient industrial bargaining power to secure effective representation and to obtain increases. Current legislation allows refusal of certification for unfair exclusion from the agreement. The proposed legislation does not.

However, employees in incorporated workplaces where there are certified agreements covering the type of work they do will be bound by them and will not have the option of staying on the award, even if they've had no say in the agreement.

2.8.3 INDUSTRIAL ACTIONS

Industrial action will not be permissible in relation to multi-business agreements. The prohibition on multi-employer agreements will lead to reduced conditions in industries with many employers since it will not be possible to negotiate separate agreements at or above the existing level in each workplace.

2.8.4 BARGAINING IN GOOD FAITH

There will be no requirement for an employer to bargaining in good faith with anyone.

2.8.5 PUBLIC INTEREST

Public interest considerations do not apply to dispute prevention and settlement in relation to CAs unless expressly provided.

2.8.6 UNION RIGHTS

Unions will not be allowed to intervene in or be present at hearings relating to non-union CAs. Union members - who could be 49 percent of the workforce - will not be able to have their union present even if they wish or specifically request the union's representation. Unions will have no right of entry to workplaces in relation to bargaining.

The requirement for support by a valid majority does not require a vote to be taken.

The required majority level, at 50 percent, is too low to protect against coercion and to ensure that agreements are genuinely based on consideration of the potential productivity contributions of all employees and the effect of proposed provisions on all employees including minorities. This is particularly so in view of the extremely limited access of unions to the bargaining table.

2.8.7 STATE AND FEDERAL RELATIONSHIP

The provision (s.170LZ) that CAs prevail over Commonwealth laws specifying employment conditions can effectively overturn existing and long-standing fundamental employment conditions, depending on which Commonwealth laws are specified in regulations. For example, paid maternity leave is specified in the *Public Service Act* and could be bargained away in a CA (unpaid maternity leave is the minimum condition). Where employment conditions have been provided in statutes passed by Parliament it would appear more appropriate for them to be removed specifically by Parliament from the statutes rather than simply overridden as these provisions propose.

2.8.8 COMPARISON WITH AWARD AND C.A.

The Act should require that a schedule be prepared by the DIR comparing award entitlements with proposed entitlements under CAs and that the schedule should be given to employees with the draft agreement, as a requirement for certification.

Majority vote provisions should include the requirement that only provisions it would be lawful to implement can be voted. That would mean it would be necessary to ensure that proposed agreements were not discriminatory in their provisions or as they would operate in the particular enterprise.

2.8.9 INCREASED TRANSACTION COSTS

It also introduces significantly greater transaction costs into the industrial system, where many parties do in fact want to have the same agreement but are required by legislation to go through the negotiation process separately, without any necessary increase in variation of conditions etc. at the enterprise.

2.8.10 MINORITY GROUP RIGHTS NOT GUARANTEED

The requirement for genuine agreement of majority of employees covered does not provide an adequate guarantee that all employees are adequately informed and consulted about proposed

agreements. Majority agreement does not ensure that the interests of minorities are considered such as workers with family responsibilities, women and young workers. The Sex segregation of workforce means that women are a minority in many occupations and industries.

Removing any requirement to inform or consult them would exacerbate the disadvantage position of many workers including women. There is some evidence that the requirements for consultation of particular groups actually had produced some change in the level of consultation in the workplace generally, and evidence that workers in workplaces covered by these requirements were happier about the bargaining processes and about the agreement reached. The 1995 DIR's report on enterprise bargaining provides evidence of this.

2.9 Australian workplace agreements

SCHEDULE 11 AUSTRALIAN WORKPLACE AGREEMENTS

s.170vc Sets out scope of coverage - corporations, Commonwealth, Territory, waterside, maritime, flight crew.

s.170VE Collective AWAs - More than one may be in a document, terms need not be the same.

s.170VF AWA written, dealing with employee/employer relationship.

s.170VG (1) Must include all minimum conditions at specified level and identify designated comparator award (if not, AWA is deemed to include that minimum condition - s.170VG(3). Only relevant conditions are those applying to the category of the employee.

s.170VG(2) AWA only required to include long service leave if it was included in the award.

s.170VG(4) Must include dispute resolution procedure - otherwise, deemed to include model procedure as in regulations.

s.170VG(5) AIRC may have conferred and may exercise disputes resolution powers regarding application or interpretation of AWAs.

s.170VH(1) Must specify expiry date no more than 3 years after AWA date.

s.170VI Provide for setting a period of time over which the comparison of AWA and award wages to be made.

s.170VJ(2) AWA stops operating if it is terminated under s.170VM by either party, or if a new AWA starts [otherwise it can continue to operate - it does not automatically cease to operate with its nominal expiry date. That means the employee only returns to award coverage by application to terminate the AWA].

s.170VK(1) Appointment of bargaining agent must be in writing.

s.170VK(2) Bargaining agent must be recognised.

ss.170VL, VM Employer and employee can agree to terminate or vary the AWA.

s.170VN AWA may be filed with EA.

s.170VO(1)(a) AWA must be signed and dated by each party and signatures must be witnessed.

s.170VO(1)(b) AWA must have employer declaration that minimum conditions are met, adult consent is given for minors, employee was given information statement from EA.

s.170VO(information statement to include Commonwealth statutory entitlements, occupational health and safety law, EA services.

EFFECT

s.170VQ (1) During its operation, AWA overrides award, (2) overrides state award or agreement (except regarding termination).

s.170VQ(4) Certified agreement prevails over AWA if CA already operating and not expired, and does not allow for AWA to exclude CA; CA prevails over AWA with expired date; otherwise AWA prevails over CA [Prevails is prevails to the extent of inconsistency - CA and AWA can operate together].

s.170VR AWA prevails over state law except in relation to occupational health and safety, workers compensation, apprenticeship, other prescribed matters' or in relation to termination.

s.170VR(4) AWA overrides prescribed conditions of employment in specified Commonwealth laws.

s.170VS AWA binds employer's successor if successor still within scope of constitutional coverage.

ss.170VT, VW & VX Penalties and damages for duress and breaches of AWA (action is in Federal Court, District, local or county court, or magistrate's court).

s.170WE(2) Onus of proof on employer to prove s/he did not dismiss or injure someone for taking AWA industrial action.

s.170WG A person must not knowingly make a false or misleading statement to another person with the intention of persuading the other party to make or not to make an AWA.

s.170WH Employer must give employee a copy of the AWA (a monetary penalty applies for breach).

2.10 Regulations

Regarding supply of documents to employees, qualifications and appointment of bargaining agents, required form of AWAs or other documents; witnessing of signatures, EA fees for certificates and copies, recordkeeping by employers. [The list does not specify providing information about who is covered, occupation, sex, age, race etc. and how this relates to employment at the enterprise].

s.291 Registrar may issue certificate if satisfied that an organisation of employees has been requested to represent them in negotiations for a CA. The certificate must not identify the employees but must show the organisation, the employer, the agreement, the premises.

s.358A Report required each three years (commencing Jan 1997 [so first report would be 2000]) on developments in bargaining covered by Parts VIB and VID.

2.10.1 COMPARISON NEEDED IN REGULATION

The regulations should specify that the documents provided by the EA to employees include a comparison between existing award conditions and the proposed AWA, as well as information about anti-discrimination legislation and complaints processes.

2.10.2 AWAs NOT ACCESSIBLE

Reliance on the corporations power means that AWAs will not be accessible to all workers. The National Farmers Federation has estimated that up to 80 percent of farmers are in unincorporated businesses and would not be able to use AWAs. Whether the employer is or is not incorporated is not a valid basis for determining employment regulation rights and entitlements.

2.10.3 LIMITS ON INDUSTRIAL ACTION

Since AWAs will continue to apply after the expiry of their nominal term unless replaced by a new agreement or unless there has been an application for termination, and s.170VJ prohibits industrial action while an AWA is in place, there will be no right to strike in relation to AWA negotiations unless the employees terminate their agreement and return to the award as the basis from which they are negotiating. This would often jeopardise previously won entitlements.

2.10.4 NO PROHIBITION ON DISCRIMINATION

There is no prohibition on discrimination in AWAs and the AIRC will have no capacity to address discrimination in the AWAs. Since there is no prohibition on discrimination, there will be no role for the Employment Advocate in refusing to accept a discriminatory AWA. The Sex Discrimination Act does not cover awards and agreements: it only provides a complaint mechanism. The complaint process involves the Sex Discrimination Commissioner referring a discriminatory award or agreement to the AIRC to take the action it considers appropriate. However, the AIRC do not make and presumably cannot vary AWAs. Because there is no prohibition on discrimination in AWAs, action in the federal court is limited to orders, which might include compensation for injury suffered, but a discriminatory contract cannot be set aside.

The requirement that a bargaining agent be appointed in writing imposes an additional burden on employees with language or literacy difficulties.

The lack of third party scrutiny before the agreement is registered makes even the very low level minimum conditions meaningless. The formal provision of an after the fact remedy is of very little use to most workers especially anyone in a relatively disadvantaged position in the labour market. Women office-workers, shop assistants, factory hands, cleaners etc are most unlikely to be able to use the procedures for complaints. The threat of retribution for workers

who make complaints is a very real one and is in fact the reason that almost all employment complaints are made after employees have lost or left their employment.

Since AWAs can override CAs there can be an ongoing ratcheting-down of conditions as union-negotiated collective agreements are overlaid with secret individual AWAs with lower entitlements for new starters and for employees who agree when approached by employers to sign AWAs.

AWAs should not be permitted to provide lesser entitlements than CAs or awards applying at the same time in the same area of coverage.

2.11 Minimum conditions

SCHEDULE 12 MINIMUM CONDITIONS [CERTIFIED AGREEMENTS AND AWAS]

s.170 XF - WAGES - no less than award over a set period (pieceworkers XG, labour market programs XH (to be set in regulations)

s.170 XI - RECREATION LEAVE - no less than four weeks paid RL; cumulative

s.170 XJ PERSONAL/CARER'S LEAVE - no less than 12 days paid leave - includes sick, bereavement, family care - maximum accumulation is 10 days a year; can be paid out at a time other than when leave is taken

s.170XK - PARENTAL/ADOPTION - a year unpaid leave after 12 months continuous service - must be taken before child's first birthday

s.170 XL - LONG SERVICE LEAVE - existing conditions in award or legislation

s.170 XM - EQUAL PAY FOR WORK OF EQUAL VALUE WITHOUT SEX DISCRIMINATION

s.170 XN - JURY SERVICE - make-up pay

s.170X Condition is met for each employee if met for each kind of employee

CASUALS

S.170XP According to the award. If no award provision for casuals, same hourly rate as full timers plus 20 percent (or higher) loading (Casuals also have award leave entitlements, long service leave; equal pay; jury service if included in the award).

s.170XC EA will determine "relevant award" for comparisons for AWA

s.170XD AIRC will determine for CA

s.170XF Wages comparisons to be based on number of ordinary and overtime/penalty rate hours, allowances, recreation leave loading [not include additional make-up amounts]

Can be satisfied by make-up clause

s.170XG Pieceworkers to be paid at current award rates; or at equivalent time/rate for average worker

s.170XI Regulations set rates for labour market programs

[AWAs normally to be comprehensive e minimum conditions - except regarding long service leave]

2.11.1 COMPENSATION FOR CASUALS

Research shows that casuals are not fully compensated for the conditions they do not have unless they are paid at least a 25 percent loading.

Minimum conditions underpinning agreements do not include definitions of "type of employment". Under an agreement, therefore, anyone can be made casual against any definition of what casual means.

2.11.2 TEST CASES - ARE CONDITIONS FROZEN?

Minimum conditions may be updated by Test Cases. It is unclear whether new conditions would flow into AWAs and certified agreements. This is particularly significant since AWAs may continue after their nominal expiry date unless they are terminated or replaced, which would mean that conditions would be frozen.

2.11.3 PAID TRAINING

The promise that no worker will be allowed to lose pay for working the same hours under the award does not protect conditions. For example, employers will not have to pay apprentices or other employees for time spent training even if the training is on the job. Many agreements and awards now specify paid training. Under s.170XW employers only have to pay trainees for hours worked and the approving authority will set wages taking account of the reduction of time worked by time spent in training.

Progress towards a competency based pay system for young workers has stopped and junior rates will now continue.

2.11.3 TYPES OF EMPLOYEES AND MINIMUM CONDITIONS

The provision that minimum conditions can be met in relation to types of employees rather than for each employee will mean that minimum conditions will not always be met and that some employees will be disadvantaged even in relation to the very low level minima which are proposed. The definition and selection of the type of employee selected will clearly be highly significant in the extent and nature of the disadvantage employees will experience. Similarly, the duration of the period over which the disadvantage is to be assessed will have considerable impact on findings regarding who is disadvantaged and how much.

There will need to be specific provision about these important matters.

Relating the rates for piece-workers to the amount which would be earned by the "average pieceworker" working the same hours as an employee can be expected to result in some arguments about who "the average pieceworker" is.

2.11.4 MINIMUM WAGE FIXING BELOW INTERNATIONAL STANDARDS

The provision for the EA to identify the relevant award for the purpose of settling minimum conditions appears to be in breach of the ILO Convention on Minimum Wage Fixing

requirement that representative organisations of employees be involved in decisions about minimum wages. The EA's decision would be appealable only in the Administrative Appeals Tribunal which leaves award deficient areas without any option for input into or any real prospect of challenge to the EA's decision.

2.11.5 EQUAL PAY PROVISION IN AWA - WHAT DOES IT MEAN?

Equal pay in relation to AWAs must mean very little since each contract is individual even if several AWAs are contained within one contract. Direct sex discrimination in pay rates - one rate for the job - would be the main meaning of the provision. It would be very difficult to show a pattern of sex discrimination across a number of contracts with the same employer because the AWA's are secret and because they are likely to vary in ways which may not be relevant to pay differences but may be claimed to be.

Restricting the equal pay provisions to a requirement for the AIRC to apply the principle in minimum award rates is substantially below what is required to provide for the achievement of equal pay in Australia and is significantly less than is required by Australia's obligations under international law.

2.12 Equal pay generally - awards and certified agreements and AWAs

2.12.1 BELOW INTERNATIONAL STANDARDS

The equal pay provision for awards is limited to minimum award rates of pay and so does not cover all aspects of remuneration which includes everything payable to employees in relation to their employment. Remuneration (which is covered in the existing legislation) includes superannuation, leave, employment benefits, bonuses and so on. The proposed provision does not. It is very much below the standard required by international conventions (ILO Convention 100 on Equal Remuneration, the ILO Discrimination Convention 111, and CEDAW, the Convention on Elimination of All Forms of Discrimination Against Women) to which Australia is signatory. The ILO makes it clear that it expects signatories to the Convention to legislate for equal pay and that equal pay provisions must cover all components of remuneration and apply to all jobs and all workers. The ILO Committee of Experts has made it clear time and time again that failure to include all these components means that the Convention is not being fully implemented.

2.12.2 NO ADEQUATE ALTERNATIVE REMEDY

It is quite inaccurate to say that all jurisdictions have adequate machinery to deal with equal pay. It is also inaccurate to say that HREOC provides an adequate mechanism to address overaward discrimination and non-pay aspects of remuneration. HREOC's decisions are not enforceable since the Brandy decision, and the AIRC said so in the Toop Case. Even if legislative changes were made so that SDA cases were heard in the Federal Court, there is still not an adequate alternative remedy since the Federal Court would not have power to vary awards or agreements to provide for equal pay for all the employees affected by an equal pay deficiency in an award or agreement.

HREOC complaints already involve considerable delays and these are likely to get longer with the reductions in funding the Government has already identified.

The remedies HREOC can award are not adequate to address over-award pay discrimination. HREOC can award compensation to the individual or group complainants but has no way of determining new industrial instruments to remove the discrimination for the future. In cases involving award and overaward discrimination, the proposed legislation means that no tribunal can deal effectively with the whole equal pay problem. Only the AIRC would be able to deal with the award discrimination. Only HREOC could deal with the overaward discrimination. There is no mechanism for the two matters to be dealt with together and no way either tribunal can take account of the full range of issues when it makes its decisions about remedies. This could result in the matters having to be pursued and dealt with twice in different tribunals and also raises the possibility that the tribunals might not make consistent decisions.

One of the great advantages of the current legislation over what is proposed and what applies in many other countries is that the emphasis is on fixing the problem rather than on awarding large sums of money as damages in successful cases without actually making orders which remove the problem for the future and for all those affected. The proposed legislation will mean that in overaward matters, damages and back-payment for the full period of the discrimination will be awarded (whereas under the current legislation back-payment would be awarded only back to the lodgement of the case). Legal costs can be expected to be significantly greater, and faced with damages and large back-payments, employers are much more likely to appeal decisions.

Australia is likely to see the very long-running and expensive cases which are common in other countries (eg the US) and which persistently fail to bring systemic solutions to pay inequity.

2.12.3 RESTRICTION ON TAKING CASES

The ILO Committee of Experts has also stated repeatedly that it is essential that workers are able to take cases for equal pay. The proposed arrangements, in restricting the AIRC's consideration of equal pay to minimum award rates, denies that right. It effectively requires that only organisations able to seek awards can make equal pay claims, thereby denying those not covered by awards and/or not members of or represented by unions, the right to lodge a claim and gain a hearing.

It must be an unintended consequence of the proposed legislative changes that only union members would be able to claim equal pay since award claims and variations can be taken only by registered organisations. It seems unlikely that employers would lodge equal pay claims for their employees or that unions would lodge claims on behalf of non-members.

2.12.4 NOT EQUAL REMUNERATION

It is arguable that Australia did not comply fully with the ILO Convention until the 1993 legislation was passed. Australia had previously relied on the extensive coverage of the workforce by awards and the fact that most of their pay for most people was set by awards, to

claim that the equal pay principle was implemented in the award system by the AIRC following the 1969 and 1972 Equal Pay Test Cases.

It is apparent from ABS statistics that the part of remuneration outside minimum award rates (over award payments, bonuses, benefits etc.) is far less equitably distributed than minimum award rates of pay. The HREOC inquiry into discrimination in over-award payments showed that men receive a greater proportion of their remuneration as over-award payments than women do, and that they are likely to receive their over-award payments on a different basis from women.

However, the proposed new industrial relations system seems likely to result in an increasing proportion of the workforce having their employment arrangements outside awards, and/or having a greater proportion of their remuneration set outside minimum award rates. Thus the proportion of remuneration affected by the equal pay provisions would decline, and the proportion of the workforce for whom the proposed equal pay provision had any meaning would decline.

Under the proposed legislative changes the equal pay cases currently proceeding the AIRC relate to overaward payments in the metal industry (which account for a substantial difference in men's and women's earnings) - could not proceed in the industrial jurisdiction. If they were to proceed under the *Sex Discrimination Act* they could lead to significant damages for each of the members of the group on whose behalf the claims were made - but could not lead to a restructured award or to formalisation of different overaward payments in an enterprise agreement as would be possible under the current legislation (and without damages).

It is notable that far more comprehensive equal remuneration provisions than those proposed exist in the UK, Europe, Canada and the USA, among other countries. Legislative provisions regarding equal pay are becoming more, rather than less stringent in view of the continuing failure to secure significant and lasting progress towards pay equity. In view of the strong association between higher levels of centralisation in industrial systems and higher levels of pay equity, current moves to decentralise and deregulate Australia's industrial system can be expected to increase the female/male earnings gap. This effect is likely to be further exacerbated if legislative protection of equal pay rights is also reduced.

The proposed legislative changes are based on the claim that adequate equal pay provisions exist elsewhere. This clearly is not the case. The summary of legislative provisions in the State jurisdictions which is attached to the paper on harmonisation of federal and state industrial relations systems shows that in Victoria the legislation also applies only to work of a similar nature. West Australia and Tasmania have no equal pay legislation.

It is recommended that the equal pay provisions be extended to ensure coverage of all employees, all components of remuneration, and to include a right for anyone to take a case, irrespective of the form of their employment contract.

APPENDIX A

Community Employment, Training and Support Services Award (1991)

- is the old Skillshare award
- covers employees involved in the delivery of Labour Market Programs
- paid rates award (except for casual sessional workers)
- 42 clauses in all

Award provisions not allowable should the WRB come into effect

Clause number	Subject matter
5	Posting of awards, and copy to all new employees on engagement Posting of union notices
6	Structural efficiency and award modification - commitment to modernising the employment conditions to promote efficiency and flexibility Provision for individual worksite agreements to be concluded with these aims
7	• Minimum weekly period of engagement for part-time employees of 16 hours/week (max 38 hours) • Minimum daily period of engagement for casuals of 4 hours • Maximum weekly engagement for casuals (16 hours, or up to 38 hours for under 3 months)
11	Union membership - preference to union members in appointing employees, advice to new employees about unions
14	Accident make-up pay up to 39 weeks
15	Payment of wages - fortnightly, not more than 5 days after period worked, wages slip to be provided
16	Record-keeping - keeping of records about employees by the employer
17	Superannuation - employer obligation to inform; obligation to make contributions during periods on workers' compensation
19	Remote localities allowance - one week's extra leave plus economy return air-fare (perhaps allowable?)

20	Amenities - heating and cooling appliances maintained; washroom facilities
21	Occupational health and safety - safety and protective clothing to be provided by employer, free of cost
22	First aid kit to be kept and maintained
30	Conference, training and study leave - 4 weeks paid study leave; exam leave; attendance at conferences etc with employer's approval
31	Trade union training leave - 5 days paid leave; or project pooling of leave to allow up to 10 days for an individual
33	Blood donor leave - 4 absences/year to donate blood
37	Protection from injury for involvement in industrial action
38	Union right of entry
39	Boards of reference - tripartite industry Boards to deal with disputes (or is this part of dispute-settling procedure?)
41	Introduction of change - employer's duty to notify about and discuss significant effects to employees of organisational and technological change

Clothing Trades Award - based this on the NSW/ACT state award, but the Federal award mirrors the state

- covers employees involved in order tailoring and producing ready made clothes for men and women
- minimum rates award
- 55 clauses in all

Award provisions not allowable should the WRB come into effect

Clause number	Subject matter
6	Demarcation of work vis textile award workers making knitted goods
9b	Training and skill program conditions (other than apprenticeships and ATS trainees)
10	Aged, infirm or slow workers - provision to pay less
10a	Workers eligible for a supported wage
18A	Trade union training leave for delegates/ workplace reps - 5 days paid leave; but number of delegates to be granted leave/year dependent on size of factory
21	Casual workers - limited period of engagement (8 weeks in a 12 month period or 13 weeks where replacing another worker) Casual workers not to be called in more than once/day (is this allowable?)
22	Part-time workers - not to be called in more than once/day (is this allowable?)
26	Contract work - requirements on employer contracting out work - employer to provide sufficient work for outworkers (at least 20 hours/ week for part-time workers, 38 hours/ week for full-time) limit on number of hours for which an outworkers can be required to work/ week (20 or 38)
27	Outworkers - limits on number employed at any one time, terms of engagement, application of parts of the award to outworkers (or perhaps these are allowable?)
27a	Registration of employers engaging outworkers with the Conciliation Committee
30	Time-books, sheets or records - keeping of records about employees by the employer
31	Seating accommodation - employer to provide reasonably comfortable seating
32	Amenities - lighting, heating and cooling appliances maintained; floor covering, drinking water, dining room, toilet and rest room facilities (where women are employed) hanging facilities
33	First aid ambulance chest to be kept
34	Award to be posted
36	Shop stewards rights
37	Uniforms to be paid for and cleaned by employer

38	Notice boards for union notices
39	Protective clothing to be supplied by employer
41	Tools of trade to be supplied by employer
44	Accident make-up pay up to 26 weeks
46	Blood donor leave - 4 absences/year of 2 hours to donate blood
47	Attendance at hospital for work-related condition to be in paid time
50	Introduction of change - employer's duty to notify about and discuss change; role of consultative committee
52	Superannuation
Schedule F	Procedure to be adopted in developing an enterprise flexibility agreement
Schedule G	Steps to be taken (including skills audit and training) in translation from old to new award classifications

REVIEW OF RETAIL AND WHOLESALE EMPLOYEES
(Australian Capital Territory) Award 1983

CLAUSE	EFFECT
Arrangement	will change following the reorganisation of the award.
Definitions	will be subject to some deletions as matters defined are removed from the award, e.g. "Rostered day off".
Commencement of award and reward of operation.	not clear from the legislation. Presumably amended as to date of ? when the award is amended by ? of SS43 - 45.
Coverage of Award	may be affected by changes ? to schedule 4 - representation rights of organisations of employees.
Part 2 . Award flexibility - 1.1 -1.4.9	this clause provides for consultation at the workplace concerning further implemenation of SE exercise and establishes processes for improvements in productivity and efficiency. It provides that union delegates may be involved in consultation and provides for variations to the award to effect agreements reached consistent with the clause. This clause will be deleted entirely from the award since S89A (2), makes no sense for such matters.
Consultative Mechanisms	deleted
Flexibility of Work	deleted. The effect of this will remove the requirement for employees to take steps to achieve "quality, accuracy and completion of any job or task assigned to the employee".
Part 3. Communication, consultation and Dispute Resolution.	deleted.
Staffing Disputes	deleted entirely

Part 4 - Employer and Employees duties, employment relationships and related arrangements.	
2.2.1	deleted - see S89A4 (b)
2.3.5 (a) (b) (c)	all deleted since they refer to training requirements which are not matters allowable under SS9A.
2.4 Proportion ?	All deleted by nature of SS9 A (4) (9)
Redundancy -	
3.1 Consultation and provision information	deleted - S89A (2) n, does not allow the inclusion of procedures that must be followed (see p.24 Exp. memorandum).
3.2 Transfer to other duties.	might stay
3.3 Transmission of business	this provision seeks to encode SI49 (I) (d) of the current Act. The Bill appears not to delete S149 but nevertheless it is not a provision covered in S89 A. deleted.
3.4 Time off work during the notice period.	deleted
3.5 Notification to the ? employment service.	deleted.
3.8 Superannuation	deleted.
3.11.4	deleted
4.6 Dispute settlement procedure	all deleted - S89A (2) (n)
Rosters for five day week	all these clauses will be deleted.
Breaks.	
3.1 Meal	deleted
3.2 Rest	deleted
Part time employees	will be deleted
Cub breaks and rest phases	will be deleted
Payment of Wages	
3.1 and 3.2	all deleted
Superannuation	all deleted
Hours	
1.3 Ceasing times	deleted
Special provisions for late night shopping night.	deleted
Trade Union Training Leave	deleted

Part 8 Transfers, travelling and working away from usual place of work.	deleted - except for 1.2 & 1.3 expenses
Part 9 Training and Related matters	there is nothing in this award clause but in any case it will be deleted.
Part 10 OH + S Equipment, Tools and Amenities	deleted.
Part 11 Award compliance and union related matters 1 wages 2 posting of award 3 right of entry	 deleted deleted deleted

APPENDIX B

TABLE SHOWING THE EFFECTS OF DECENTRALISATION ON WOMEN

Dates	Elements of system	Implications for women and low paid workers
Australia up to 1987 Pay equity for full time women workers improves from 54% in 1907 to 79% in 1987	Centralised industrial relations conciliation and arbitration Awards / collective bargaining Centralised wage fixing through national awards and national wage cases	Sometimes difficult to get issues of concern to women on the agenda. Mechanisms for addressing systemic discrimination through test cases (eg Equal Pay cases and Maternity Leave Case) and <u>Sex Discrimination Act 1984</u>
Australia - (1987 - 1996) -enterprise bargaining 1991 - 1993 IRRA NB: Women's pay peaked at 84.6% of the male AWOTE August 1991, before decentralisation / enterprise bargaining started. Women's pay drops to 83.3% of the male AWOTE (May 1996)	Partly decentralised industrial relations system, with reduced powers of IRC to arbitrate, and only conciliate for enterprise agreements National wage cases replaced by two tier systems, award restructuring, minimum rates adjustments 1987-91. From 1991 enterprise agreements and safety net increases Collective bargaining for awards and enterprise agreements involving unions (except EFAs after 1993) Consultation requirements and requirements to take account of interests of groups whose interests may be disregarded eg women, people from non-English speaking backgrounds, young workers Requirements for public report on bargaining including effects on women, NESB people, part timers	Increased mechanisms to address systemic discrimination / disadvantage in IRA IR matters became subject to the Sex Discrimination Act 1992. Parental Leave Test Case 1991. Family leave test case 1994-95. Award reviews (including discrimination) 1995 (model anti-discrimination clause) Enterprise agreements deliver greater pay increases in male dominated industries. Increased numerical and time flexibility with broader increase in <u>acceptance of part time work</u>. Superannuation and award safety net increases; lags in pay increases for groups with less industrial strength. Equal remuneration cases involving overaward payments commence.
1996 - Proposed Workplace	Deregulation trend continued	Industrial Relations

Relations Bill scenario	with contents of awards limited to 20 items. Industrial Relations Commission to deal with disputes in relation to awards and certified agreements, and to manage stripping down of awards. Enterprise bargaining with limitations on union involvement. Individual contracts registered with the Employment Advocate. State agreements and awards can displace federal awards.	Commission able to be used only for disputes related to awards and certified agreements. Equal pay limited only to minimum award rates. Employment Advocate registers AWAs. Not available to public scrutiny.
1993 Victoria and 1994 West Australia 1991 New Zealand	Fully deregulated and decentralised system. Victoria: 3 minimum conditions outlined in legislation for annual leave, sick leave, unpaid maternity leave, and minimum pay based on 1993 award base rates. Awards replaced by individual employment contracts.	Little data available. Conditions trade-offs. Many Victorian workers without pay increases since 1993. Extensive movement to federal system.

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