

**FORWARD TO THE PAST**  
**NATIONAL PAY EQUITY COALITION**

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

**EXECUTIVE SUMMARY AND  
RECOMMENDATIONS**

June 1996

## 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

| <b>Workplace Relations Bill<br/>1996</b>            | <b>National Pay Equity Coalition Proposed Amendments</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Schedule 1</p> <p><b>Objects</b></p>             | <ul style="list-style-type: none"> <li>• Include objects to promote training, consultation, career pathing, satisfying work, and to promote industrial harmony</li> <li>• Delete reference to limits in arbitration set by the Act</li> <li>• 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</li> <li>• 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).</li> </ul>                                                                     |
| <p>Schedule 3</p> <p><b>Employment Advocate</b></p> | <ul style="list-style-type: none"> <li>• The Employment Advocate would be unnecessary if, as suggested below, AWAs come under the scrutiny of the AIRC.</li> <li>• If established the EA should be free of ministerial direction and regulation and be set up as a statutory office</li> <li>• The provision for dismissing the EA for “incompetence or inefficiency” should be deleted because of the danger of interference with the EA’s independence</li> <li>• 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</li> <li>• The EA should be required to provide free legal assistance to complainants limited only by an appealable determination that the complaint is without merit</li> <li>• The EA should be established within the AIRC</li> <li>• Publish details of AWAs, in annual report to Parliament and make report available to public</li> <li>• Provide an annual report to Parliament</li> </ul> |

**Workplace Relations Bill  
1996**

**National Pay Equity Coalition Proposed Amendments**

- 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

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|----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                  | <p>coverage</p> <ul style="list-style-type: none"><li>• 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</li><li>• The EA should develop a checklist for use as part of the registration process to ensure compliance with the minimum standards</li><li>• 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</li><li>• Discriminatory AWAs should not be registered</li></ul> |
| <b>Casuals</b>                   | <ul style="list-style-type: none"><li>• 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</li></ul>                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Schedule 12<br/>Equal pay</b> | <ul style="list-style-type: none"><li>• 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)</li><li>• 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</li></ul>                                                                                                                                                                          |
| <b>Reporting</b>                 | <ul style="list-style-type: none"><li>• 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</li><li>• 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!</li></ul>                                                                                                                   |