

• SUBMISSION TO THE SENATE EMPLOYMENT, WORKPLACE RELATIONS,
SMALL BUSINESS AND EDUCATION COMMITTEE

WORKPLACE RELATIONS LEGISLATION AMENDMENT (MORE JOBS, BETTER
PAY) BILL 1999.

The Secretary
The Senate Employment, Workplace Relations, Small Business and Education
Legislation Committee
S1.61 Parliament House
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CONTENTS

PART ONE

Introduction	3
Equal remuneration A (I) :Objects of the Act 3(k)	4
Protection of pay, working conditions, workplace safety and job security of women employees – A(ii) & (iii)	7
The award system – A(ii)	8
Australian Workplace Agreements	12
Role of the AIRC A(vi)	15
Federal award coverage	16
Unfair dismissals – A(iii)	16
Role of unions, Inspectorate and women's organisations – A(iii)	18
Part time work – A(iv)	19
Maternity protection	20
Conclusion	21
List of Recommendations	22

PART TWO

Summary of key concerns raised in the National Pay Equity Coalition's 1996 submission and developments in relation to them	26
References	30

Introduction

- 1) We have followed with interest the operation of the Workplace Relations Act over the last two and a half years. We believe that we can make some constructive comments on the proposed amendments and on ways of strengthening the Act in relation to the needs of women workers and the low paid. We urge that the Committee give careful deliberation to these amendments that will fundamentally change industrial regulation in Australia. We hope that this Submission will be of assistance to the Inquiry and look forward to the opportunity to appear before the Committee.
- 2) We note that the task of monitoring the operations of the WRA has been difficult because of the absence of appropriate data, research and analysis. It has been difficult to track coverage of women by various federal and state industrial instruments including awards, agreements and AWAs and difficult to relate conditions and changes in them to coverage. The effects of award reviews including in relation to subsequent incorporation into agreements of conditions previously provided in awards have been very hard to ascertain. The relationships between conditions provided under industrial instruments and those actually applying in workplaces have been very hard to gather evidence on. This information has been particularly hard to track for especially disadvantaged women workers including women from non-English speaking backgrounds.
- 3) While information on the effects of the industrial relations system for smaller groups of women workers including women with disabilities and Aboriginal and Torres Strait Island women is always difficult to find, it is most important that ways be found, in the light of all the evidence suggesting that the industrial system is producing increasingly differentiated outcomes with worst effects for the most disadvantaged workers. Especially in the light of the magnitude of changes in the industrial system already made and those proposed to be made, the absence of and difficulties in access to such significant information seriously impede parliamentary and community scrutiny of many matters that are of fundamental importance in our society.
- 4) The absence of specific information about the operation of the industrial system means research necessarily is based on broad data sets in which it is difficult to differentiate jurisdictions and to trace correlations for smaller populations. For these reasons, we have proposed that information about the operations of the system be improved and made more public.
- 5) There are many areas of interest to us in the proposed amendments. However, for the purposes of this Submission we confine ourselves to the following areas of interest which have been discussed with Minister Reith and which fall within the Terms of Reference of this Inquiry:
 - equal remuneration
 - protection of the pay, working conditions, workplace safety and job security of women employees
 - part-time work provisions
 - maternity protection.

Equal remuneration - Terms of Reference A (i), Paragraph 3K: Objects of the Act.

Improving the effectiveness of the equal remuneration provisions

- 6) Since the enactment of the equal remuneration provisions in the Workplace Relations Act 1996, one major test case has been concluded (the HPM case) and another (The Age case) is under way. There has also been a major pay equity inquiry conducted by the NSW Industrial Relations Commission.
- 7) All of these proceedings have shown that there is currently a significant technical barrier in Australia to the achievement of equal pay claims. This is the requirement some industrial parties claim and an AIRC Commissioner has found in one case to prove discrimination is the reason that work of comparable value performed by men and women is paid differently. The following brief discussion of The Age and HPM cases sets out some difficulties related to the requirement to show discrimination.

AMWU and The Age (Print R3273)

- 8) In the first decision in this case, Ross VP noted the Workplace Relations Act (WRA) requirement to identify the employees covered by the equal remuneration application, and noted that there is no power to cure a defect for class of employees such as female clerical employees. The AMWU/ACTU had said that the claim could not cover all clerical employees as no gender discrimination could be shown between male clerical and male production employees, and the basis of the claim was discrimination against female clerks by comparison with trade-level male production workers.
- 9) Ross VP said that, first, the Commission must be satisfied that there is not equal remuneration for work of equal value. The first step in doing that is to ascertain whether rates have been established without discrimination based on sex. Therefore the AMWU would need to show that the rates of pay of clerical employees had been established having regard to the gender of employees (or of a large proportion of them). Ross noted that this approach had been adopted by Commissioner Simmonds in the HPM Case and he adopted it in The Age case in the absence of any argument to the contrary.
- 10) Ross said that there was no impediment to the application covering all clerical employees as the central issue is not the gender of the particular current employees but whether remuneration for the work they do had been established without discrimination based on sex. He dismissed the application.
- 11) The case was lodged again and Whelan C rejected the company's challenge to the Commission's jurisdiction (C No.32261 of 1999). Whelan says:

The words of the Convention do not suggest that the only comparisons acceptable are those which compare the work being performed by males with those being performed by females. Indeed it is clear that the issue is not who performs the work but the basis on which the rates have been established.

12) Whelan also says:

As noted by both Simmonds C (AMWU and HPM Industries (No.1) [Print P9210]) and Munro J (AMWU and HPM Industries (No.2) [Print QQ1002]), the Commission's principles and practice related to work value comparison and changes are a primary source of guidance about what factors and considerations are of accepted relevance to evaluating whether the relevant work is of equivalent value.

13) The company's appeal against Whelan's decision to the Federal Court failed and the case was set down for hearing in August 1999 and later postponed to November 1999.

AMWU and HPM Industries (No.1 [Print P9210] and No.2 [Print Q1002])

14) In the HPM case, the Australian Industrial Relations Commission's Third Safety Net Adjustment and Section 150A Decision (Print M5600) definition of discrimination (which includes both direct and indirect discrimination and has the Sex Discrimination Act (SDA) formulation of indirect discrimination as it was prior to the 1995 SDA amendments) was adopted. Commissioner Simmonds notes that any argument in favour of the SDA definition (as submitted by the AMWU/ACTU) needs to be advanced and determined in a forum where if adopted it would be generally be applied by the Commission.

15) Simmonds C said that the first step was ascertaining whether rates had been established without discrimination based on sex. He said the necessary precursor was to establish that the work was of equal value. He said this was essential as direct discrimination only arises where treatment is different and circumstances the same, and that required establishing equivalence of the work being compared.

16) Simmonds C found that there was different remuneration of the male and female comparators but the circumstances were not sufficiently similar to amount to direct discrimination. He did not consider that s.93 of the WRA imported the SDA's reversal of the onus of proof but nonetheless saw good reason for the person or institution imposing indirectly discriminatory requirements to establish their reasonableness. With regard to indirect discrimination he found that no requirement or condition had been established so it was not necessary to consider "reasonableness" of the requirement or condition. He noted that gender segmentation of workforce does not amount to a requirement or condition.

17) In any case, as is pointed out by Justice Glynn in the Report of the NSW Pay Equity Inquiry, it would often be difficult or impossible to prove discrimination under any definition in circumstances where nonetheless the remuneration

clearly has been affected by the sex of the workers. This is particularly so where the way rates were affected is that cases were not taken, work value was not examined, and/or industrial bargaining was not pursued. As Justice Glynn points out, there are a range of characteristics of disadvantaged female dominated occupations/industries that make it likely that rates of remuneration are affected by the sex of the workers. Those include high incidence of part time or casual work, small workplaces, low levels of unionisation, limited strategic industrial strength, and concentration in service industries.

- 18) The central meaning of ILO Convention 100 on equal pay is that equal remuneration is to be provided for men and women workers for work of equal value – it does not require proof that failure to provide that in the past was because of discrimination. There is no retrospective operation of the Convention nor of the Workplace Relation Act to provide any remedy for a past discrimination. All that is provided and required is that equal remuneration be provided for the future and all that is required to attract that is to show that there is not equal remuneration for men and women where the value of work is equal.
- 19) We feel sure that it was not the Government's intention to have equal pay claims under the WRA founder on this technicality when it adopted the equal remuneration provisions in the WRA especially in the light of the significance of the international Conventions in the WRA.
- 20) It may be of interest that Justice Glynn found in the recent NSW Pay Equity Inquiry that a requirement to prove that a difference in remuneration for men and women workers for work of equal value was a result of discrimination was outside of, and inconsistent with. ILO Convention 100 on Equal Remuneration.
- 21) It can be expected that an increasing proportion of industrial matters will be settled by industrial parties and a declining proportion will be decided by industrial tribunals. Especially for the agreements reached "in the shadow of the Commission". it will be helpful to provide guidance as to how the letter and the spirit of the equal remuneration provisions of the WRA would be met.
- 22) We believe it would be particularly helpful to have an equal remuneration principle established to provide guidance for employers, unions and employees with the move to more negotiation taking place at the workplace level, where the parties may not understand the full implications of the equal remuneration provisions and the international Conventions underpinning them.
- 23) A guidebook developed by industrial parties with the AIRC would further significantly assist industrial parties.

AWAs and unequal pay for comparable work: Terms of Reference A (i), Objects of the Act 3 (k)

- 24) Proposals to allow different AWAs to workers doing comparable work appear to be inconsistent with equal remuneration provisions of the Act and the Convention on which they are based. Under ILO Convention 100, the form of industrial regulation (award, collective or individual agreement) makes no

difference to equal remuneration requirements. The relevant considerations are remuneration (all components) and the value of work. There is no basis for implying that AWAs can somehow be exempt from these provisions of the Act.

- 25) Any provision that workers in the same circumstances in relation to wage-fixing could be treated differently would also offend against the ILO Convention 111 regarding discrimination in employment and occupation and may also offend against ILO Convention 156 on equal opportunity and equal treatment of men and women workers and workers with family responsibilities.

26) Recommendations:

- 1. That the equal remuneration provisions of the Act be reviewed with a view to amendment to remove technical barriers to the achievement of pay equity*
- 2. That the Government support the adoption of an appropriate Equal Remuneration Principle by the AIRC, so as to clarify the legislative provisions and enable them to achieve their original objective of bringing about equal remuneration for women*
- 3. That the Principle be supported by the development of a Guidebook by industrial parties and the AIRC regarding the equal remuneration provisions and principles.*
- 4. That the proposal to allow for different AWAs to be offered to workers doing comparable work be abandoned.*

Protection of the pay, working conditions, workplace safety and job security of women employees: Terms of Reference A (ii) and (iii)

- 27) A number of the proposed amendments relate to this issue, particularly those concerning the award system, Australian Workplace Agreements (AWAs), the No Disadvantage Test, the role of the Australian Industrial Relations Commission (AIRC) in settling workplace disputes, Federal award coverage, unfair dismissals and the role of unions in enforcing awards, agreements and workplace safety.
- 28) Our concerns in these areas are founded on our knowledge of women's position in the Australian workforce. Women often work in small workplaces and in poorly unionised areas. Women are more likely than men to work on a part-time or casual basis. For example, almost three-quarters of part-time workers are women, and 63% of casual workers are women (ACIRRT:1999). Women are therefore less likely to be in a strong position to bargain individually or collectively for the superior pay and working conditions that are theoretically available via workplace bargaining. They are more likely to be covered only by minimum award conditions.
- 29) Our experience in many organisations which provide advice and assistance to women employees such as the Working Women's Centre, Human Rights and Equal Opportunity Commission, and the Women's Electoral Lobby is that women in these workplaces are commonly subjected to unfair and unlawful

dismissal, or to harassment, discrimination, and reductions in their hours of work and other conditions sometimes to a point where they are forced to resign from their jobs. Those women are often unaware that a union covers them, or of how to join a union. They are also often subjected to intimidation, subtle or blatant, by their employers to prevent them from joining a union or from seeking union assistance.

- 30) These concerns are heightened by amendments proposing reduced roles for third parties (the AIRC and Government inspectors etc.) as well as for unions. Vulnerable women workers would increasingly be unsupported in advocating their interests and securing their rights.

i) the award system

The award safety net: Terms of Reference A (ii)

- 31) We are concerned that the proposals to further reduce the award safety net, to remove from awards certain allowable matters and to impose new prerequisites for safety net increases may have the unintended consequence of leaving vulnerable women with even less protection and in a more disadvantaged position than they are now. Women are more likely to rely on awards than men and women are still less likely to be covered by enterprise agreements. AWIRS 1995 found that awards were the dominant determinants of rates of pay in the female-dominated industries of retail, education, health and community services and accommodation, cafes and restaurants. Further, women are a large proportion of the part-time workforce and part-time workers are heavily reliant on the award system and have been significantly less successful in enterprise bargaining, as Professor Mark Wooden has found. A higher proportion of women's pay than men's is in the award system and is therefore at risk from weakening of that system.
- 32) According to Senator Lees (1999), the proportion of Australian workers covered by awards is substantial but declining. A third of workers in the federal jurisdiction are not covered by agreements and depend on safety net increases. Coverage has fallen from 85% of workers covered by awards in 1985 to 75% by 1995 and a further decline is projected, because of declining union membership and increased use of contracting arrangements.
- 33) Changes to the Objects of the Act could disproportionately disadvantage women workers by providing a legislated interpretive context of awards as minimal and marginal although they still set much of the remuneration of many workers in Australia. According to Minister Reith's press release in April 1999, 1.7 million workers in Australia rely on the safety net for their pay increases. Increases in the State systems tend to be triggered by increases in the federal system.
- 34) The proposal that the "award act as a safety net providing basic minimum wages and conditions of employment in respect of appropriate allowable matters to help address the needs of the low paid" effectively denies many women workers a fair and equitable wage. Historically the tribunal system, when setting awards, has had a commitment to the social objective of a fair and equitable minimum wage. Some of those who depend on the award system are not low paid (for example,

some female dominated professions including some in the public sector) because of the decisions of industrial tribunals about the value of their work and they should not be deprived of fair remuneration simply because they lack the industrial power to have their work properly valued. Indeed there may well be good reason to consider further whether their award rates as they are undervalue their work. Female dominated professions in the public sector face the challenge of being a small group in the public sector workforce and public sector unions, and they are often doing work that is related to traditionally female caring roles that have been undervalued as they have moved into the sphere of paid work and become increasingly professionalised. These workers have historically been reluctant to take industrial action partly because of their concerns about their clients.

- 35) The provision requiring the Commission not to focus on internal relativities and the exclusive focus on low paid work will significantly disadvantage these workers. The proposed changes to s.170MW (vii) remove access to arbitration for workers on paid rates awards (under s.170MX) and leave them to bargain and deal industrially with the government, still the largest employer in the country, and an employer much more strongly ideologically committed to individually based bargaining than to fairness and equity.
- 36) The award system was based on notions of social equity, justice and merit. In the Workplace Relations Act 1996 there was a move away from the principles of a fair and equitable minimum to that of ensuring a safety net of fair and minimum wages and conditions, within the context of living standards generally prevailing in the Australian community, economic factors and the needs of the low paid.
- 37) The Workplace Relations Amendment Bill 1999 further reduces the concept of a fair and equitable minimum by restricting awards to the role of a 'safety net providing basic minimum wages and conditions to help redress the needs of the low paid and to ensure that awards do not provide for wages and conditions above the safety net'. The role of the award safety net becomes that of providing basic minimums to protect the low paid (Section 88A and 88B).
- 38) The emphasis on a concept of a fair wages system is further reduced in the Government's Regulation Impact Statement (page 7) which, when referring to the award simplification process, maintains awards as a "fair and reasonable safety net for low paid and disadvantaged workers" but also says that in the process awards are to be simple instruments that do not impede workplace efficiency, or organisational effectiveness and which give primacy to the productivity and efficiency requirements of the business.
- 39) There already is significant evidence of increasing dispersion of earnings in Australia and increasing disadvantage of low paid workers as the industrial system has become increasingly decentralised and deregulated during the 1990s and further details of this are provided in Part 2.
- 40) While increased wage dispersion has been occurring prior to the 1990s, it has continued apace during this decade and is a phenomenon facilitated by decentralisation and deregulation of industrial relations arrangements (see, for

example, Rowthorne 1992). In Australia, hourly earnings data for non-managerial men in full-time employment show that the position of the lowest decile group fell from 70 per cent to 65 per cent of the male median over the period 1990 to 1998 (ABS *Survey of Employee Earnings and Hours*). Reduction of the award safety net is likely to further increase dispersion of wages below the median, making low paid workers comparatively worse off. (This may be compared with the experience in the UK following abolition of the Wages Councils - see Machin and Manning 1994).

- 41) To the extent that women are concentrated among the low paid, they will be disproportionately disadvantaged by such trends. Moreover, increasing dispersion below the median for males may limit the potential for pay equity advances. For example, gains made relative to men will have less impact as male wages extend further below the median. This is the effect that Blau and Kahn (1997) have referred to as 'swimming upstream'.
- 42) As many women are award dependent it is very likely that they will be relegated to a basic minimum for the "low paid" and we are concerned that increased priority for consideration of the productivity and efficiency of the business will override their needs. We would suggest that the goals of equity and fairness and those of productivity and efficiency of the business are not mutually exclusive, but rather inter-dependent. The goals of equity and fairness should be given the same status as productivity and efficiency.
- 43) We oppose the proposal that safety net adjustments will not flow onto awards that have not been simplified (Section 113 (3)). This will mean that women who are dependent on awards that have not been simplified will not get minimum pay increases. This proposal penalises women through no fault of their own.

Allowable matters: Terms of Reference A (ii)

- 44) We were concerned in 1996 with the move towards reducing allowable matters in awards. Some of our fears have been realised. For example, the award simplification process so far has resulted in women losing employment rights such as paid maternity leave. The current proposals to further reduce the allowable award matters again give us cause for concern. Changes to the principles of the Act where allowable matters now become 'appropriate' allowable matters undermine employee entitlements. Many unrepresented workers may lose such entitlements if they are not in a position to be able to defend such conditions.
- 45) We oppose the removal of skill-based career paths from allowable award matters. This undermines the enormous amount of work done to build career paths into low-paid female-dominated awards in the past 10 years in areas where the award is the predominant form of wage regulation (eg. in the hospitality industry). The development of such career paths has been an essential strategy in the quest for pay equity for women.
- 46) We oppose the removal of matters pertaining to training and education (including training, study leave and fees) from allowable matters in awards. We feel certain that women will not be able to bargain successfully for these conditions in those

workplaces where employers are reluctant to allow women to make use of the training entitlements they now have in their awards.

- 47) We note that Heather Ridout, Executive Director of the Australian Industry Group, in her paper to the *1999 Women, Management and Industrial Relations Conference*, has opposed the removal of skill-based career paths from award allowable matters. She noted that building skill-based career paths for industries had been a significant focus of training reform and the overall broadening and deepening of workers skills in Australia. Without award recognition of those skills and career paths, it is far more likely that individual employers (especially small employers) will simply recruit for skill rather than develop it and that any training provided will be so narrow and firm-specific that its value to industry and to individual employees is limited.
- 48) We oppose the removal from awards of provisions similar to those covered in other legislation (eg. long service leave, public holidays, workers' compensation payments). In some cases, State legislation provides inferior conditions to Federal awards. For example, the qualifying period for long service leave in some female-dominated Federal awards is less than the qualifying periods in some State laws. This is significant for women workers who tend to have lower job tenure and interrupted careers.
- 49) There are also strong efficiency arguments for including key employment provisions affecting workers in the main awards. It is important for workers to have accessible, integrated and transparent statements of their entitlements and it simplifies and clarifies administration of entitlements for employers especially those in smaller businesses. Otherwise, employees and employers need to work across a range of State legislation as well as the award and any agreements in order to have a full picture of entitlements. The difficulties in doing this and the prospects of mistakes being made and employers being found liable for them has been a frequent cause of complaint by employers. Failing to take account of the full range of legislative and award provisions results in employees not securing their entitlements - and the incidence of that can be expected to increase as the entitlements are removed from view in the awards. Indeed, in many cases, the reason for incorporating a provision covered in State legislation in a federal award has been that there was a need to clarify entitlements and in many cases the provisions have been incorporated in the award by consent of the industrial parties.
- 50) The qualifying period for long service leave, and the availability of public holidays, are very important concerns for women workers trying to balance work and family responsibilities. Workers' compensation make-up pay is particularly important for injured women workers in low-paid jobs.
- 51) Furthermore, if States reduce the entitlements in their legislation, women, given their weaker bargaining power, are unlikely to be able to negotiate this into their contracts.
- 52) We are concerned about the removal of transfers between work locations from allowable matters. It must be ensured that this has no effect on the right

contained in the present federal award parental leave standard provisions for a pregnant employee to be transferred to a safe job or to part time work, or on a person's right on return from parental leave to transfer to a part-time job (under the Parental Leave Test Case Decision).

- 53) We are most concerned about any proposal that would tie safety net adjustments to award simplification. The AIRC has a huge workload in dealing with award simplification. Withholding increases until the Commission can finalise reviews amounts to a fine for those whose reviews - for no fault of their own - are not dealt with by the time a general increase is awarded. This would be particularly unjust where the subsequent review established that there were no award matters outside the allowable matters. Presumably, no compensation for those workers is envisaged and those who fall behind rarely catch up. Historically, women's industries - especially the more disadvantaged - have come late in the bargaining round.

54) Recommendations:

- 5. That the Objects of the Act be amended to provide for 'an award system which provides fair and equitable minimum standards of wages and conditions, which is secure and consistent, and which reflects the social and economic needs of employees in the context of living standards generally prevailing in the Australian community'*
- 6. That the award simplification process restate this commitment to a fair and equitable minimum standard of wages and conditions.*
- 7. That the proposed amendments to s.170MW(vii) be abandoned.*
- 8. That payment of minimum safety net increases not be conditional upon awards being simplified.*
- 9. That skill-based career paths, long service leave, public holidays, workers' compensation make-up pay, training and education leave, and the right to transfer to a safe job during pregnancy be retained as allowable award matters.*

ii) Australian Workplace Agreements (AWAs)

- 55) Evidence suggests that there are two groups on AWAs-those with strong bargaining power on high pay and negotiated conditions and those with weak bargaining power on lower pay, small or no wage increases and reduced employment rights. Research on AWAs indicates that they have lower pay increases spread over a longer period of time than other forms of industrial regulation, and are more likely to have features of particular concern to women, such as an increased span of hours (CCH/ACIRRT:1999).
- 56) Evidence so far does not dispel the fears we held for women with the move in the 1996 Workplace Relations Act away from centralised forms of regulation towards more individual agreements between employers and employees.

- 57) We believe that the further shift towards individual agreements promoted by the proposed amendments must be underpinned by stronger, not weaker measures to ensure AWAs do not disadvantage women and that they are open to monitoring for their impact on women's pay and working conditions.
- 58) A brief survey of reports in *Workforce* regarding rejected AWAs shows that the AIRC's scrutiny of the agreements is a most important defense against exploitation. The AIRC has raised concerns about agreements in the security industry, hotel/cafe industry, retail, meat industry and the finance industry (copies of extracts are attached at Appendix 1).
- 59) The Employment Advocate's rejection of some 1200 AWAs indicates that there is a continued need for scrutiny of the AWAs, as pointed out by Senator Lees in her Sir Richard Kirby Lecture, Wollongong, 14 September 1999 (www.democrats.org.au/sstttatements/industrial_rel_kirbylecture.html).

The No Disadvantage Test: Terms of Reference A (vi).

- 60) In order to be effective and to protect the interests of women workers, the No Disadvantage Test must be transparent and open to public scrutiny. We oppose the proposal that allows the application of the Test to be left with the Employment Advocate and not referred on to the Commission for perusal, as it would mean that the test is applied in a less transparent way and with no avenue for public scrutiny.
- 61) We strongly oppose the proposal that AWAs be allowed to be implemented without approval by the Employment Advocate. That proposal means that AWAs will have become established industrial facts in the workplace before they are considered at all and that makes any subsequent consideration of them very limited in usefulness. Further, the proposals put onto the employee the burden of taking further action in relation to an agreement that subsequently is not approved.
- 62) We are concerned that the Employment Advocate can approve an AWA even if it does not satisfy the test on the basis that the Advocate is satisfied that 'it is not contrary to the public interest'. (Section 170 VCB 1 to 8 and Section 170VCC). When referring to the public interest, the Advocate must apply the principles (if any) set by the President of the Commission. However, there is no mechanism for ensuring that his or her decisions accord with them. The proposals state that the President may establish principles. There is no requirement to do so, and there is no established and consistent set of criteria on which the principles of public interest must be applied by the Advocate. We believe such principles need to be developed with some urgency and that the principles should be dealt with by a Full Bench of the Commission since they are not yet arbitrated and explicit in this current context.
- 63) We also believe that it is important that those agreements which are approved which do not comply with the No Disadvantage test but which are held by the Employment Advocate not to be contrary to the public interest be made available

for public scrutiny. We consider it very important that such information be available to organisations with a legitimate interest in the impact on women of such agreements. The public interest considerations ought also to be publicly addressed.

64) We believe that the role of the AIRC in the application of the No Disadvantage Test should be retained and that there should be a review of the operation and application of the Test, with a view to improving its effectiveness through greater transparency and openness to public scrutiny.

65) A recent report of the AIRC's role in determining the appropriate award to be used as the benchmark for the "no disadvantage" test shows the value of the Commission's role (SMH 21.9.99). The Australian Guarantee Corporation proposed that the appropriate award for assessing its proposed non-union agreement was the Clerks Finance Companies Award, not updated since 1990. The Commission ruled instead that the appropriate award was the Westpac award, as the employees do the same work as Westpac employees and AGC is a subsidiary of Westpac. This situation, where the "no disadvantage" test would be applied in relation to increasingly irrelevant awards as agreements became more prevalent, thus undermining the effectiveness of the test, is exactly what we were concerned about in our previous submission (attached).

Relationship of AWAs to Certified Agreements: Terms of Reference A (ii)

66) We are also concerned with the proposal that AWAs are to be allowed to override Certified Agreements. Some employers may abuse this provision by prevailing on vulnerable women employees to accept pay and conditions inferior to the Certified Agreement standard. We feel that any new provisions on AWAs must improve safeguards against exploitation rather than expose women to greater risk of exploitation. We are concerned that certified agreements and down-graded awards being used as the benchmark for considering disadvantage in AWAs will lead to ratchetting down of remuneration and conditions for vulnerable workers.

67) Recommendations:

10. That the Australian Industrial Relations Commission retain its role in the application of the No Disadvantage Test. We suggest that a process be undertaken to monitor and review the application and operation of the No Disadvantage Test and that the Government support an application to the Full Bench of the Commission to establish clear principles in regard to the 'public interest'

11. That the proposal to allow implementation of AWAs prior to approval of them be abandoned.

12. That the Government set up an information system which provides inexpensive and ready access to data and information on the contents of AWAs, to allow for better monitoring of the gender impact of AWAs.

13. *That the Employment Advocate make available for public scrutiny all data on AWAs approved which do not satisfy the No Disadvantage Test including information on any public interest considerations relating to approval of the agreements.*
14. *In the circumstance when AWAs are being offered at a workplace where a certified agreement already exists that the No Disadvantage Test be tested against the terms of any certified agreement that it displaces. We support Keith Hancock's recommendation on this issue in his submission as providing a much fairer test that is more truly reflective of the original purpose and meaning of the "no disadvantage" test. Otherwise, there is a de facto acceptance that progressive reduction of workers' entitlements is the effective purpose and result of these industrial relations changes rather than any improvement in the efficiency and flexibility of the system.*
15. *That the proposal to allow AWAs to undermine Collective Agreements and awards be abandoned.*

iii) The role of the Australian Industrial Relations Commission (AIRC): Terms of Reference A (vi).

- 68) We are concerned that many of the proposals in the Bill will have the effect of weakening the role of the AIRC. We believe that the AIRC has historically worked in the interests of Australian women by presiding over a centralised wage fixing system (demonstrated to be more conducive to pay equity than decentralised systems), and by being the site of breakthrough on working conditions vital to women workers (eg. maternity leave and family leave). The NSW Pay Equity Inquiry considered evidence of relationships between pay equity and more or less centralised systems and Justice Glynn concluded that centralised systems contribute to improving pay equity. It is statistically clear that pay equity is much better in the proportion of remuneration that falls within the supervision of the industrial tribunals than outside it.
- 69) We have already indicated our concerns about the removal of certain matters from the Commission's jurisdiction to conciliate and arbitrate (the 'allowable matters'). We are also concerned that proposals to limit the Commission's power to arbitrate in paid rates awards will disadvantage teachers, nurses and public sector workers if they cannot reach agreement with employers. It is already possible that many employees in the federal public service are subject to strong pressure to accept AWAs as a condition of their employment.
- 70) We oppose the development of mediation as an alternative to the role of the AIRC, rather than as an additional option. The AIRC has proven to be a responsive and accessible means for bringing workplace negotiations and disputes to a satisfactory resolution where one or other party refuses to negotiate in good faith or stalls on meeting or discussing the matter in question. We have seen many cases where an employer's refusal to respond to complaints compounds serious workplace problems being experienced by women, such as discrimination, harassment or intimidation by supervisors or workmates.

Sometimes the compulsory conciliation powers of the AIRC are the only means by which a woman is able to have the matter dealt with seriously.

- 71) While alternative dispute resolution mechanisms like conciliation and mediation can sometimes be effective and cheap and fast ways of resolving disputes there is a danger that rights will be compromised and undermined, especially where there are significant differences in power and knowledge of the parties involved.
- 72) We are very concerned to see the Commission's assistance to working women closed off by this proposal. We are concerned also that the proposals prohibiting compulsory conciliation while mediation is under way may be abused by some employers, so that mediation is strung out indefinitely with no real action being taken to resolve a problem.
- 73) Furthermore, access to the AIRC in dispute situations is at present free, while the new option of private mediation services will incur a cost, one which is unlikely to be affordable for many low-paid women employees, while much wealthier employers would be free to commence an open-ended mediation process that effectively deprives the poorer party of their rights.
- 74) *Recommendation:*
16. *That the AIRC retain all of its current conciliation and arbitration powers, and that access to the AIRC remain free of charge.*

iv) Federal award coverage

- 75) We are concerned at the proposal to make it more difficult for employees in some other form of employment relationship to achieve federal award coverage. This will have a significant effect on women who have previously relied on state awards in places where state minimums have been reduced, ie. Victoria. This has a particular impact on the predominantly female areas of retail and hospitality employment in Victoria.
- 76) Proposals to inhibit choices of jurisdiction for industrial parties sit oddly with the declared intention of the federal government to give primacy to the parties' decisions about where their industrial interests are best accommodated.
- 77) *Recommendation:*
17. *That the proposal to repeal Section 4(1) Subsection 152(5) be abandoned.*

v) Unfair dismissals: Terms of Reference A (iii)

- 78) Despite unfair dismissal and anti-discrimination laws, we know that women are still regularly subjected to unfair and unlawful dismissals (such as on grounds of pregnancy). The NSW Draft Code of Practice and Guidelines on Pregnancy and Work, which has been recommended for consideration for national adoption by the HREOC Inquiry into Pregnancy Discrimination, includes an appendix

providing details of dismissals cases in the industrial and discrimination jurisdictions, showing (as the HREOC Inquiry did) that this form of discrimination is still common.

- 79) We also regularly see women constructively dismissed (forced to leave) as a result of dangerous work practices, harassment, bullying, reduced or intolerable pay or working conditions and refusal to accommodate family responsibilities. Therefore we are concerned that protections for women in the event of an unfair or unjust dismissal are not reduced in any way.
- 80) For these reasons we are concerned that with the proposal to limit the basis on which constructive dismissal cases may be taken. We are also concerned with the proposals to make it more difficult and expensive for women to lodge unfair dismissal claims with the AIRC.
- 81) It is our experience that it is already difficult enough for women to pursue unfair dismissal claims, and that the outcomes of successful claims are usually very modest (for example, pay in lieu of a small period of notice). When women have been dismissed, they are usually in a position of having no income, and are therefore unlikely to be able to afford the proposed \$100 filing fee. We are also concerned that the proposed amendments providing that costs may be awarded against applicants, and that applicants may be required to provide security for costs, could discourage women in this position from making valid unfair dismissal claims.
- 82) While we acknowledge that the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999 does not cover some issues that we raise we are concerned that taken together with proposals in the Workplace Relations Amendment (Unfair Dismissals) Bill 1998 many workers' access to Unfair Dismissal procedures would be eliminated by the proposals. The proposals to change Unfair Dismissal laws to limit access of casual workers and workers in small workplaces to unfair dismissal procedures is likely to have an unfair impact on women, who are more likely to be found in these categories (for instance 32% of working women are employed as casuals; 54% of accommodation workers and 39% of retail workers are casual workers). This is potentially discriminatory.
- 83) Unfortunately we are aware of employers already using casual employment as a device to avoid unfair dismissal provisions. We fear that the proposed amendment will only encourage this practice further.
- 84) While understanding the operational requirements of small business, we do not accept that women working in small business should by virtue of that fact alone have inferior employment protection, given the absolute necessity of secure employment to women's financial well-being. This view is held also by those of us who run small businesses. Many small businesses would like to see an equitable bottom-line that must be observed by all rather than to be forced into competition to reduce decent and basic standards. That is one of the reasons the award system and employment regulation generally is often found to be efficient and preferred by small businesses that do not want to spend their scarce resources on developing employment policies and standards specific to each business and

separately for each employee, with all the risks of unfairness and exposure to legal action that brings.

85) We consider the proposal in the Workplace Relations Amendment (Unfair Dismissals) Bill 1998 to limit unfair dismissal remedies to employees with more than 6 months' continuous employment as an additional unnecessary burden on women employees. Our small business members believe that the present 3-month period should be adequate for a competent employer to assess an employee's suitability, and that problems that may arise beyond this point can be lawfully dealt with within the present law.

86) *Recommendations:*

18. That the proposed new section 170DA (on constructive dismissal) be abandoned.

19. That the proposals to increase the filing fee for unfair dismissal claims, the proposals to make it possible to have costs awarded against an applicant, and to make it be possible for the AIRC to order the applicant to give security for costs be abandoned.

20. That the proposals in the Workplace Relations Amendment (Unfair Dismissals) Bill 1998 to deny casual workers, workers in small workplaces and workers with less than 6 months' service with an employer access to unfair dismissal procedures be abandoned.

vi) The role of unions, the Inspectorate and women's community organisations in enforcing awards, agreements and workplace safety: Terms of Reference A (iii).

87) Women have a limited number of avenues to redress the problems of discrimination, underpayment, exploitation and issues of health and safety. These include public industrial relations and anti-discrimination authorities, Working Women's Centres, unions, and legal advisers. Although the performance may vary, unions can provide a particularly fast, responsive and effective means of sorting out women's problems in the workplace in contrast to some of the more legalistic avenues. Sometimes unions work in combination with some of the other avenues of help to achieve a satisfactory outcome. We are concerned that this proposal limits the access of women to a proven avenue of assistance.

88) We are also aware that unions have played an important role in the monitoring of awards and the regulation of workplace health and safety standards. Women, particularly outworkers, often work in non-unionised sites.

89) In our experience women are often too intimidated or unaware of how to join or invite a union into their workplaces. Proposals to limit the right of entry to the invitation of a member who can be identified by her employer will mean that, in effect, exploitation and health and safety problems will continue and not be acted upon in many workplaces.

90) Over the last few years the effectiveness of the Inspectorate in enforcement of laws that govern wages and conditions has been seriously curtailed. Without such bodies women workers are particularly vulnerable to exploitation and underpayment of minimum wages. We seek an active and effective Inspectorate.

91) We commend the work of the women's community organisations funded by the Government in assisting women, particularly those in poorly organised workplaces, with agreement-making, award enforcement, unfair dismissals and health and safety problems. We urge that the Government continue to support these organisations in their important work.

92) *Recommendations:*

21. *That the proposal requiring a union representative to have a current invitation in writing from a union member employed at the premises to gain access to a workplace (Section 285C(2)) be abandoned.*

22. *That the Government initiate a review of the objects and function of the Inspectorate with the purpose of re-invigorating and maximising its effectiveness so as to ensure that workers in less organised sectors are not subject to undetected and continued exploitation.*

23. *That the Government continue to commit ongoing and secure funding for community organisations that provide information and assistance to women in negotiation of employment contracts, resolution of disputes and regulation of workplaces; and that the Government support and resource the establishment of such organisations in jurisdictions that still do not have centres.*

c) Part time work provisions: Terms of Reference A (iv).

93) Our concerns in this area have always been to ensure regular and predictable hours of work for part time employees and to ensure women are not forced into part time work when their preference is for full-time work or longer hours, as necessary for financial survival.

94) In the 1996 Act, the Government took into account some of these concerns by defining in the Act a "regular part-time employee" as an employee who works less than full-time ordinary hours, has reasonably predictable hours of work and receives pro-rata award pay and conditions.

95) We believe, however, that this does not go far enough. Women workers usually work part-time because of other responsibilities their families rely on them to meet (eg. child care or elder care). It is essential for part-time women workers to have totally predictable hours of work so that they can meet these commitments. Schools and childcare centres close at particular times each day and do not open on weekends. These are the non-negotiable realities that most women who work part time must work around.

96) Furthermore, we believe that if it is the Government's intention to promote more flexible hours options in the workplace especially to assist workers with family responsibilities, there should be provisions to prevent full time jobs being made part time or part time hours being reduced by a unilateral decision of the employer without regard to the employee's needs and wishes and family responsibilities.

97) *Recommendation*

24. *That in the definition of "regular part-time employee" in the Act, the words "reasonably predictable hours of work" be replaced by "regular and predictable hours of work".*

25. *That the allowable award matters include provisions ensuring that the hours of an existing employee cannot be reduced without consultation and agreement with the employee.*

d) Maternity protection: Terms of Reference A (i) & (iv)

98) The Workplace Relations Act 1996 at present provides for rights to leave immediately before and for some time after the birth of a child, but does not provide for other employment protection during the course of a pregnancy. In order to strengthen the Act in relation to workers with family responsibilities, we propose that the Government seriously consider adopting ILO Convention 103 - Maternity Rights. This would create a constitutional basis for general legislation in this area, after which we would propose that the Government build on the existing Parental Leave provisions in the Act by inserting at least the current minimum federal award standard for employment rights during pregnancy into the Act. This would ensure a minimum standard of employment protection for women during pregnancy, as well as after the birth of the child.

99) We continue to oppose minimum periods of maternity leave before or after the birth since women's needs and capacities are so varied. We consider that the only relevant considerations about the period of leave women should take is the decision of the woman and her medical practitioner.

100) We understand the reasons for the present delay in adopting ILO Convention 103. Until these difficulties are overcome, we would suggest an alternative measure that could be adopted under present constitutional powers. This is to include in the Act a general provision that there be no discrimination against a worker because of her pregnancy. In addition, we would reiterate the importance of the right to a transfer to a safe job during pregnancy being included in the allowable award matters, as discussed above.

101) *Recommendations:*

26. *That the Government ratify ILO Convention 103 on Maternity Rights as soon as technically possible, and include appropriate general pregnancy provisions in the Workplace Relations Act.*

27. That the Government immediately include in the WRA a general provision to prohibit discrimination on account of pregnancy and to significantly improve the rights and protection of those rights for pregnant workers and women and men on parental leave.

Conclusion:

102) This Submission is made on behalf of organisations representing the interests of women in the workforce. We hope that the Committee carefully considers our Submission and also provides us with an opportunity to appear at the hearings. We believe that the Bill makes significant changes to the regulation of employment and will therefore have a significant impact upon not only women, but all workers. The proposed amendments seriously undermine the role and function of the Industrial Relations Commission and place greater responsibility for the regulation of the employment relationship in the hands of the Office of the Employment Advocate. We urge the Committee to make careful deliberations as to the far-reaching nature of the changes to industrial regulation and to the institutions which have well served the economic and social welfare of Australian society. We suggest that a more far reaching review should be undertaken into the operation of the Workplace Relations Act 1996, the proposed amendments, the institutions entrusted with the delivery of industrial regulation and the role they play in the promotion of economic and social welfare in Australia.

103) Recommendations

28. That a further Review of the WRA be undertaken in terms set by the Senate Committee to consider the operation of the Act and the institutions which administer it; and that the Review be based on research to provide reliable data about the workings of the Act and that the matters for investigation and report include those outlined in paras 3, 4 and 5 of our submission.

29. That that Review provide the basis of regular reports to Parliament about the operations of the industrial system, including effects on disadvantaged workers.

104) List of Recommendations:

- 1. That the equal remuneration provisions of the Act be reviewed with a view to amendment to remove technical barriers to the achievement of pay equity*
- 2. That the Government support the adoption of an appropriate Equal Remuneration Principle by the AIRC, so as to clarify the legislative provisions and enable them to achieve their original objective of bringing about equal remuneration for women*
- 3. That the Principle be supported by the development of a Guidebook by industrial parties and the AIRC regarding the equal remuneration provisions and principles.*
- 4. That the proposal to allow for different AWAs to be offered to workers doing comparable work be abandoned.*
- 5. That the Objects of the Act be amended to provide for "an award system which provides fair and equitable minimum standards of wages and conditions, which is secure and consistent, and which reflects the social and economic needs of employees in the context of living standards generally prevailing in the Australian community"*
- 6. That the award simplification process restate this commitment to a fair and equitable minimum standard of wages and conditions.*
- 7. That the proposed amendments to s.170MW(vii) be abandoned.*
- 8. That payment of minimum safety net increases not be conditional upon awards being simplified.*
- 9. That skill-based career paths, long service leave, public holidays, workers' compensation make-up pay, training and education leave, and the right to transfer to a safe job during pregnancy be retained as allowable award matters.*
- 10. That the Australian Industrial Relations Commission retain its role in the application of the No Disadvantage Test. We suggest that a process be undertaken to monitor and review the application and operation of the No Disadvantage Test and that the Government support an application to the Full Bench of the Commission to establish clear principles in regard to the 'public interest'*
- 11. That the proposal to allow implementation of AWAs prior to approval of them be abandoned.*
- 12. That the Government set up an information system which provides inexpensive and ready access to data and information on the contents of AWAs, to allow for better monitoring of the gender impact of AWAs.*
- 13. That the Employment Advocate make available for public scrutiny all data on AWAs approved which do not satisfy the No Disadvantage Test including*

information on any public interest considerations relating to approval of the agreements.

- 14. In the circumstance when AWAs are being offered at workplace where a certified agreement already exist that the No Disadvantage Test be tested against the terms of any certified agreement that it displaces. We support Keith Hancock's recommendation on this issue in his submission as providing a much fairer test that is more truly reflective of the original purpose and meaning of the "no disadvantage" test.*
- 15. That the proposal to allow AWAs to undermine Collective Agreements and awards be abandoned.*
- 16. That the AIRC retain all of its current conciliation and arbitration powers, and that access to the AIRC remain free of charge.*
- 17. That the proposal to repeal Section 4(1) Subsection 152(5) be abandoned.*
- 18. That the proposed new section 170DA (on constructive dismissal) be abandoned.*
- 19. That the proposals to increase the filing fee for unfair dismissal claims, the proposals to make it possible to have costs awarded against an applicant, and to make it be possible for the AIRC to order the applicant to give security for costs be abandoned.*
- 20. That the proposals in the Workplace Relations Amendment (Unfair Dismissals) Bill 1998 to deny casual workers, workers in small workplaces and workers with less than 6 months service with an employer access to unfair dismissal procedures be abandoned.*
- 21. That the proposal requiring a union representative to have a current invitation in writing from a union member employed at the premises to gain access to a workplace (Section 285C(2)) be abandoned.*
- 22. That the Government initiate a review of the objects and function of the Inspectorate with the purpose of re-invigorating and maximising its effectiveness so as to ensure that workers in less organised sectors are not subject to undetected and continued exploitation.*
- 23. That the Government continue to commit ongoing and secure funding for community organisations that provide information and assistance to women in negotiation of employment contracts, resolution of disputes and regulation of workplaces; and that the Government support and resource the establishment of such organisations in jurisdictions that still do not have centres.*
- 24. That in the definition of "regular part-time employee" in the Act, the words "reasonably predictable hours of work" be replaced by "regular and predictable hours of work".*

25. *That the allowable award matters include provisions ensuring that the hours of an existing employee cannot be reduced without consultation and agreement with the employee.*
26. *That the Government ratify ILO Convention 103 on Maternity Rights as soon as technically possible, then include appropriate general pregnancy provisions in the Workplace Relations Act.*
27. *That the Government immediately include in the WRA a general provision to prohibit discrimination on account of pregnancy.*
28. *That a further Review of the WRA be undertaken in terms set by the Senate Committee to consider the operation of the Act and the institutions which administer it; and that the Review be based on research to provide reliable data about the workings of the Act; and that the matters for investigation and report include those outlined in paras 3, 4 and 5 of our submission.*
29. *That the Review provide the basis of regular reports to Parliament about the operations of the industrial system, including effects on disadvantaged workers.*

PART TWO

Summary of Key Concerns Raised in the National Pay Equity Coalition's 1996 Submission and Developments in Relation to Them

- 105) A copy of the submission to the 1996 Senate Committee hearings in relation to the Workplace Relations Act is attached for the Committee's reference.
- 106) The developments foreshadowed in the 1996 submissions have generally occurred. The pay and conditions of many women have deteriorated, while the industrial system has become less efficient and less transparent, and accountability has been reduced.

The submission claimed the gender earnings gap would widen and women's conditions of employment would deteriorate

- 107) While aggregate gender pay ratios have remained static, research shows that the relative position of the worst off women workers has worsened. Professor Gregory's recent article in Australian Economic Review (vol 32 no 3 pp 273-8) concludes: "labour market institutions are impacting differentially on different subsets of women. Wages of low paid women will probably be adversely affected by recent changes in labour market institutions such as the weakening of unions and moves towards decentralised pay setting but wages of high paid women now seem largely independent of labour market institutions in these three countries [Australia, US, UK]".
- 108) He concludes that the experience in the UK points strongly to labour market deregulation as contributing to the decline of the position of the lowest paid women by five percentage points in relation to male median earnings. He also concludes that average pay ratio is now less useful as a measure of women's economic progress or as an equity target as earnings dispersion increases. It does seem likely that the improvements in the relative position of the highest earning women are driven by improvements in women's human capital endowments (such as higher education levels, and increased workforce experience, among others) and possibly by some reduction in discrimination against women in higher earning jobs. These improvements obscure the static or declining relative position of women in lower earning jobs. Similar results have been reached by several other researchers.
- 109) While aggregate statistics show a relatively stable earnings gap between men and women in Australia over the 1990s, this is not necessarily evidence that recent legislative changes have had no impact on women's pay and conditions. One of the expected effects of the Workplace Relations Act and the current proposed changes is the extension of wage dispersion in the labour market. The following table provides indicators of wage dispersion in Australia between 1990 and 1998, showing that dispersion below the median over that period has been particularly marked for male employees, for whom the lowest decile of earnings

fell from 69 per cent of the median in 1990 to 64 per cent in 1998. As the corresponding trend for women was much less marked, the overall effect of this change may be to narrow the earnings gap between men and women, or to counterbalance other negative influences on the earnings gap. In other words, aggregate statistics on the gender pay gap do not tell us enough about the influences on women's relative pay, particularly in the context of wage dispersion.

Table 1: Earnings dispersion, total hourly earnings, non-managerial employees, 1990-1998

	10 th percentile/median			90 th percentile/median		
	Male	Female	All	Male	Female	All
Full-time						
1990	0.70	0.71	0.70	1.53	1.54	1.55
1998	0.65	0.70	0.68	1.59	1.56	1.58
Part-time						
1990	0.60	0.70	0.67	1.80	1.62	1.64
1998	0.57	0.68	0.64	1.79	1.71	1.73
Full-time+part-time						
1990	0.69	0.71	0.69	1.54	1.55	1.56
1998	0.64	0.70	0.68	1.67	1.65	1.67

Source: Whitehouse 1999, using ABS *Survey of Employee Earnings and Hours*, unpublished data.

- 110) The trends shown in the Table 1 are somewhat understated as they are based on non-managerial earnings. A greater dispersion is apparent if managerial employees are included in the data, but this precludes the use of hourly earnings figures (and therefore inclusion of part-time workers), as information on managerial hours is not provided in the ABS data. Bearing in mind that these are conservative estimates of dispersion, the overall implications are that a reduction of minimum standards in this context will risk the spread of low pay. Also, to the extent that male and female average wages are affected differently, the aggregate gender pay gap statistics may provide a falsely benign picture.
- 111) Another aspect of wage dispersion that is occurring in Australia is the increased difference in returns to part-time, compared with full-time, work. While Table 1 showed dispersion trends within full- and part-time work for men and women, Table 2 shows trends in the ratio of part-time to full-time hourly earnings over the period 1990-1998. It illustrates a significant fall in the returns to both casual and permanent part-time work relative to full-time permanent work, with the ratio of average hourly earnings in part-time to full-time permanent work falling by 9 percentage points between 1990 and 1998.

Table 2: Average earnings of part-time employees as a proportion of full-time permanent earnings, total hourly earnings, non-managerial employees, 1990-1998

Earnings ratios	1990	1998
Part-time/ full-time permanent	0.94	0.85
Part-time casual/ full-time permanent	0.92	0.83
Part-time permanent/ full-time permanent	0.96	0.88

Source: Whitehouse 1999, using ABS *Survey of Employee Earnings and Hours*, unpublished data.

112) The marked trends shown in Table 2 are important for two main reasons. First, they are evidence of an increasing dispersion between different types of jobs in the labour market and reinforce the need to protect conditions for both male and female employees in non-standard forms of employment. Second, they are of particular significance for women given the disproportionate concentration of women in part-time work – part-timers accounted for 45 per cent of female employment in 1998, but only 14 per cent of male employment (ABS *Weekly Earnings of Employees (Distribution) Australia*). Again the aggregate gender pay ratios do not tell the full story in the context of these trends. For example, while there has not been a deterioration in the aggregate gender pay ratio for part-time workers between 1990 and 1998 (if anything a slight improvement is evident), this cannot be seen as an improvement for women in the context of overall falls in the relative returns to part-time work. The policy implications are that further reductions in the capacity of labour market institutions to regulate part-time employment will be deleterious, particularly to women.

Part-time

113. The conditions of part-time work are crucial to women. Part-timers accounted for 45 per cent of female employment in 1998, compared with 14 per cent of male employment (ABS *Weekly Earnings of Employees, Distribution*). Of great concern, therefore, is the declining ratio of part-time to full-time earnings in Australia in recent years. Over the period 1990-1998, part-time hourly earnings for non-managerial employees fell from 94 per cent to 85 per cent of permanent full-time hourly earnings. These falls were evident for both casual and permanent part-time employees (ABS *Survey of Employee Earnings and Hours*, unpublished data, Whitehouse 1999). This trend means that the superficially benign picture of a static or slightly improving gender pay ratio for part-time employees tells only part of the story. In the context of relative falls in the returns to part-time work, gains made relative to men *within* part-time work deliver little overall advancement for women. The policy implications are that further reductions in the capacity of labour market institutions to protect the conditions of part-time employment will be deleterious, particularly to women.

114) The position of part time and casual workers has continued to deteriorate, according to research by Campbell (1999). Earnings have declined and security of employment has deteriorated. Campbell shows that there has been a sharp increase in casual workers (from 15.8% of the workforce in 1984 to 26.9% in 1998) and that

half the expansion is in the increase in prime age working women and full time students in casual work. Research by Hall, Harley and Whitehouse (1999) also shows that part time workers have less training and lower levels of discretion in their work. They suggest that the worse conditions for short hours work in the UK may partly be attributed to different regulatory histories in the UK and Australia and especially to significantly higher short hours work in education and health in the UK.

115) Evidence continues to accumulate that increased flexibility is flexibility in the interests of employers and not in the interests of employees. Whitehouse's (1999b) studies of work and family arrangements in particular companies and from AWIRS data shows that more vulnerable and disadvantaged women workers including lower earning and/or lower skilled workers are not gaining access to flexibility that assists in meeting work and family commitments.

116) There has been considerable distortion of what is happening in the work and family area of employment conditions, facilitated by the lack of a coherent and systematic approach to investigating what is really causing problems for workers in relation to family commitments. The federal government has produced a great deal of glossy material acclaiming as a great work and family benefit conditions such as choice of whether overtime is taken as pay or time in lieu (even where this choice has traditionally been available in awards). Similarly, access to rostered days off is counted as a family friendly condition although that is only the case in a practical sense if the person has a right to take the days when they need to - and that is not at all apparent simply by counting conditions in agreements. The significance of arrangements such as these two examples - ability to take overtime as time in lieu, and access to RDOs - also depends on the extent to which those conditions actually relate to the real needs of workers, an issue on which very little evidence is produced by the federal government.

117) Surveys of bargaining in 1994 and 1995 by the Department of Industrial Relations have shown ongoing work intensification and declining satisfaction of employees with their work/family balance. The ACTU's research has yielded similar results and the issues have been an increasingly important employment issue. At the same time, families need two incomes and NATSEM's Professor Ann Harding and A Szukalska (1999) have found that paid employment of mothers has been one of the biggest factors contributing to reduced incidence of child poverty. Mothers pay heavily in foregone earnings for periods out of the paid workforce, according to Chapman, Dunlop, Gray, Liu and Mitchell (1999) who found that a woman's lifetime earnings are reduced by 28% if she has a child. Sometimes women are forced out of the workforce by inflexible and inequitable work arrangements.

118) It has been argued earlier in this submission that employers themselves recognise that abolition of skill based classifications and career paths from awards is antagonistic to the provision of training by employers, to efficient processes for transferability of skills and knowledge, to standards for assessment of quality of training provided, and for workers obtaining ongoing benefit from training they undertake.

The submission claimed the industrial system would become more complicated, less transparent and less accountable and workers' rights would be downgraded

119) The WRA has proved difficult to work with, confusing, complex and poorly drafted. It is in striking contrast to the NSW Industrial Relations Act in that respect. The difficulties with the WRA are in part related to the number of amendments made to the legislation during its passage through Parliament, amendments that in many cases did improve the Bill but did lead to odd interactions between sections of the Bill.

120) There have been increased transaction costs in the industrial system, through multiple coverage and through increased activity cost incurred through multiple bargaining arrangements. There have also been extensive, lengthy and costly court proceedings as employees have sought to defend long-established conditions in awards. At the end of those proceedings, the same provisions often are incorporated in agreements.

121) Winners/losers have been increasingly hard to identify and data on the system is restricted and hard to find and analyse. In quite a short period it has become increasingly difficult to track what is happening in the industrial system, especially in relation to enterprise agreements and AWAs.

122) There has been very limited information made public about the effects of the changes in the industrial system on people from non-English speaking backgrounds, workers with disabilities, young workers etc.

123) Indeed, basic information – such as coverage by various industrial arrangements and the effect of them – has been very sparse.

124) We still consider there should be regular reports to Parliament about the operations of the industrial system, including effects on disadvantaged workers.

The submission claimed that women would be less able to access their rights and entitlements and that the Employment Advocate would not protect women's interests and would obscure the operation of the bargaining arrangements under AWAs.

125) Not only has this concern been borne out, the current proposals would further weaken the very limited protections remaining in the system, through the Employment Advocate, the AIRC and unions.

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