Submission

to

Senate Employment, Workplace Relations and Education Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

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Submitter: Ms Eva Cox

Organisation: Women's Electoral Lobby Inc

Address: Po Box 191
Civic Square ACT 2608

Phone: 02 6247 6679

Fax:

Email: wel@wel.org.au

Women's Electoral Lobby Australia Inc.
PO Box 191, CIVIC SQUARE ACT 2608

Ph: 02 6247 6679
Email: wel@wel.org.au
Web page: http://www.wel.org.au

Women's Electoral Lobby Australia and National Pay Equity Coalition

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Committee Secretary
Senate Employment, Workplace Relations and Education Committee
Department of the Senate
Parliament House
Canberra ACT 2600

Email: eet.sen@aph.gov.au

Contacts: Eva Cox eva.cox@uts.edu.au Suzanne Hammond 0422 122 416

Introduction

The Women's Electoral Lobby and the National Pay Equity Coalition are extremely concerned about the potential negative impacts of the Government's new workplace relations system on women.

The Women's Electoral Lobby (WEL) and the National Pay Equity Coalition (NPEC) have long been involved in the pursuit of improving the working conditions of women in Australia. We have contributed to policy making and discussion and to previous Senate Inquiries into industrial relations issues, and have intervened in the key test-cases on award standards conducted by the Australian Industrial Relations Commission.

We are concerned that these changes will have a detrimental impact on most women, and we are particularly disappointed by the potential missed opportunity to recognise more fully the intersection between work and family needs in the industrial relations framework. For instance the proposed 'Fair Pay and Conditions Standard' does not incorporate the improved work and family entitlements set by the Australian Industrial Relations Commission in the recent Family Provisions Test Case. The changes are being 'sold' as being good for families, yet the Bill contains an apparent shift in balance to employers and individual agreements which ignores evidence that these do not serve women well either in terms of pay or family friendly conditions.

The legislation is extremely complex and requires considerable attention to even understand its provisions and their effects. WEL and NPEC are also, along with many other non-government organisations, at a loss to understand why these changes have to be rushed through Parliament to a timetable that makes informed community debate and participation almost impossible. This does not inspire confidence in or broad-based support for a system that threatens to reduce women's "work choices". WEL and NPEC set out below some reasons for our concern.

A potholed and ploughed up playing field?

The proposed changes to the IR system are posited on some very untested and unlikely assumptions: one is that there is a level playing field on which workers and employers negotiate. Experience shows that the world of paid work is characterised by major power imbalances. The economic capacities of workers and employers differ substantially, as many workers cannot afford to hold out for more and/or risk being unemployed. The often repeated statement by government ministers about worker bargaining power in relatively tight markets will only work for those workers with specific skills in demand and the confidence to assert their bargaining rights. However, in many types of jobs, workers may be seen as interchangeable and substitutable, particularly those where skills are undervalued or not recognised. In these cases, low wages are maintained, work may be intensified, redistributed or just left undone and bargaining power is a myth. This is the experience for many women. From a long history of involvement in promoting women's equality at work, we believe that the wholesale shift to individual bargaining poses a threat to women's employment conditions and opportunities.

Some feminised jobs will fare very badly

Take for instance some areas of personal care or child care where jobs are often seen as unskilled or low skilled, required qualifications are limited, wages are low and turnover often high. These types of services operate with undervalued, gendered skill bases where it is commonly assumed that because these mirror domestic tasks, anyone can perform the services and staff are seen as interchangeable. The problem may be exacerbated because these services have limited funding, and fees and charges cannot be increased without affecting user groups, themselves often disadvantaged. Workers in these care sectors have little bargaining power despite shortages in qualified workers, as they may be seen to able to be easily replaced, at least partially, by underqualified staff. With limited capacity to bargain, the only defence such workers have had has been the widespread adherence to the award system and the capacity of unions to negotiate more adequate pay rates and conditions even for non-members, and to monitor compliance.

Many workers in these areas are also newly arrived migrants, older workers, casuals and part timers, all of whom are less likely to be able to negotiate and often frightened of losing their jobs. Few are likely to know someone in the union or have the confidence, knowledge or resources to appoint a bargaining agent. They will be prime targets in employers' efforts to reduce labour costs and increase profits, in areas where wages are necessarily a substantial proportion of the business costs. The private childcare provider, ABC Early Learning, for instance, is already seeking to reduce staff costs from 60% of their outgoings to 50%. The new IR framework offers them the opportunity for enterprise wide AWAs which push the conditions down to reduce costs. This would increase their profit margins and raise their share price and dividend, but not improve quality and accessibility of child care for the public or ensure security for workers. Women are more likely to be childcare workers or user-parents than major shareholders so will be the losers.

Areas like aged care that operate on a 24 hour basis, and other forms of employment that also require this type of shift-cover, employ high proportions of young workers, older workers with limited other employment options and family members trying to balance working hours to fit family care needs with financial requirements. Few of these will feel able to negotiate because their circumstances (study hours, care requirements, other work commitments) or personal characteristics (limited other work experiences, seen as too old, language/educational limitations, disabilities) make finding other work options hard. When people lack the resources to risk a period of unemployment, or the confidence to look for other jobs, they become more vulnerable to unfair contracts and exploitation.

We are concerned that the wages of many women workers will be reduced by loss of penalty and casual rates. Australia has a high proportion of casual workers, many of whom are women. Changes in pay rates and penalty rates will affect the take-home pay and working hours of many of these workers, who often 'choose' to do weekend shifts because the penalty rates boost wages that would otherwise require longer hours to achieve an adequate income. Studies of the impact of similar legislation in New Zealand indicate that women lost penalty rates and causal loadings. Working longer hours may

not fit with family needs or other time demands. Without penalty rates, employers may resort to making weekend or other a-social hour shifts compulsory parts of the AWAs.

Intersections of the welfare changes with IR changes are problematic

Job applicants who are on NewStart payments will be unable to refuse any job on offer, so they will have to work these often unwelcome weekend and evening shifts, even where it interferes with family care and responsibilities. The government insists this is a step up because they claim that families are best served by having paid workers as parents. Perhaps the Ministers involved still see the family as male breadwinner and female carer, as they fail to notice that the care abilities of single parents may be seriously compromised by having to work awkward shifts. The Minister claims that they will exempt parents where there is no care, but there will be no Centrelink support for parents or other carers who are unable in bargaining to resist unreasonable shift demands after starting a job.

Sole parents and other primary carers need flexibility and security to deal with sick children and other care demands. They often lack a partner or informal care support person so have to take time off for sick children, school events or appointments. The legislation provides for ten days combined personal/carer's leave. For many sole parents this may not be adequate to cover their own and their children's needs and it is not clear what protections are available for employees whose employers are not prepared to be flexible. We also contend that the new Section 93N of the Bill regarding the provision of medical certificates will impose unnecessary burdens on workers ability to access sick leave without a certificate.

Separated parents often share children by one having weekend care, the other weekdays. This allows children to have stability during school time and still see the other parent regularly. If such parents are on NewStart, and many are, they will now be required to take on work that may have compulsory week-end shifts that limit or prevent this common model of shared care. The separated fathers may then find that they see less of their children, or that they have to substitute more shifting and difficult arrangements that may also create problems for the mothers. As mothers too will have to find jobs once their children are six, both may find they have overlapping weekend or evening shifts that affect their parenting responsibilities.

Outworkers require extra protection because their isolation and often limited knowledge about entitlements make them vulnerable to exploitation. State awards in the Textile, Footwear and Clothing industry have been augmented over recent years to set up presumptions that these workers are employees of the work-provider, to ensure that they are adequately paid and have access to OHS protection and other workplace standards. The shift to Federal law will mean these presumptions will be changed so only those the employer claims as employees will be protected, so many will now be moved back to exploited subcontractors.

We also point out that the new restrictions on Right of Entry by unions to workplaces will make the uncovering of worker exploitation in outworking situations impossible. Many

outworkers work in home based workplaces. Rights to enter residential workplaces have been removed. Given the vital part that trade unions have played in protecting the low-paid, we strongly protest at the limitations being placed on union in their role of inspecting wages, conditions and health and safety of workplaces where there is no member.

Minimum Wages and the Fair Pay Commission

We submit that the changes to the way that minimum wages are set will result in a lowering of a fair and equitable wage standard for Australian workers, that women workers will be disproportionately affected by this deterioration, and that the gender pay gap will widen. Australia has historically enjoyed a wage fixing principle based upon a notion of what is considered to be a fair community standard. The objectives of the new Fair Pay Commission make no mention of a fair standard, but instead focus on promoting economic prosperity and job creation.

The Federal government have consistently opposed a decent increase in minimum wages. They have argued that the minimum rate in Australia is too high and that this has a negative impact on employment. The government have been unable to produce research that confirms that lowering the minimum will increase employment. When one examines employment levels and minimum wage levels there is little support for this argument. The table below looks at Minimum wage to average wage ratios, employment levels and unemployment in countries with similar stages of economic development. It indicates that low minimum rates do not increase employment levels.

Country	*Minimum Wage*	*Unemployment*	*Employment*
Australia	58.8	5.4	70.7
United States	32.2	5.5	73.8
New Zealand	53.6	3.9	75.4
United Kingdom	44.2	4.6	74.1

A decline in the minimum wage is of particular concern to us as women are much more likely to be low paid. Average weekly earnings for males in November 2004 were $1032 while the average for females was only $875.00. Women work in industries and occupations that are low paid such as private households, retail clothing and footwear, accommodation, restaurants and cafes. Casual workers are always paid at the lowest rates, again we point out that a significant number of casual workers are women.

The Government and some commentators argue that minimum wages jobs provide mobility into higher paying jobs. All studies indicate that workers entering low paid jobs remain in the low paid sector. Further it is argued that low pay jobs reflect a lack of skills and training or some personal characteristic, however, low paid jobs and industries are more a reflection of the social and gender structuring of jobs and workers. Again we point out that WorkChoices offers no mechanism for the proper valuation of women's work. International pay equity studies have shown that the most effective strategy for reducing the gender pay gap is the enforcement of adequate minimum wage rates.

Many low paid industries are dominated by large trans-national companies so employers' capacity to pay the minimum wage is not the real issue.

We are also concerned that there is no provision to adjust the National Minimum Wage on an annual basis. The frequency and review process is unclear. We are concerned that we might see a similar situation as that which occurs in the United States where adjustments have not taken place for a period of eight years.

WEL and NPEC call on the government to include a requirement for the Fair Pay Commission to monitor and report on trends in the gender pay gap, including the effect of its wage decisions on gender pay equity.

New standard conditions: a backward step, a downwards drift

Working hours

The Government has announced that '*Workchoices will lock in maximum ordinary hours of work of 38 hours per week – an accepted community standard*'. Then it goes on to say that this can be averaged over twelve months! Not per week or even per pay period, but annual averaging. This means that many parents will have little capacity to demand regularity or predictability which is essential for meeting child care and other family needs. Given the limited effect that ordinary working hours definitions have had to date on limiting unpaid overtime or under-employment, this almost fully deregulated working-time regime is bound to impact on families – children may hardly see their parent(s), and partners hardly have time to talk to each other, for possibly weeks on end? It makes a nonsense of a weekly working hours limit. The Government should come clean and call it an annual working hours limit of 1,976 (that is 38 x 52).

Parental leave

The Government is preserving the system of parental leave that has just been thoroughly scrutinised and found wanting in an exhaustive process of research, analysis, argument and consultation, by the Australian Industrial Relations Commission. In its Family Provisions Test Case Decision, it instituted important new workplace entitlements for parents, including the right to request an additional year of unpaid parental leave, the right for parents to take eight weeks simultaneous leave around the time of birth, and the right to request part-time work after parental leave. The fact that the AIRC found it necessary to make a formal decision on the right to request suggests that there are many employers who are not prepared to negotiate without some formal obligation or requirement. Australia has been found by the OECD to lag behind other developed countries in its provision of family-friendly work conditions. This IR reform program provides the ideal opportunity for the Government to modernise workplace arrangements in this area. The same should be said for **paid maternity leave** – it is an opportunity to implement a long-overdue national scheme of fourteen weeks paid leave, as recommended by the Human Rights and Equal Opportunities Commission.

Annual leave and sick/family leave

A four week annual leave entitlement is minimalist enough (and only generous if compared with the US) but to be vulnerable to having half of it traded away is particularly concerning for low-paid workers (often women), and parents for whom annual school holidays of around fourteen weeks are a constant juggle.

While the provisions for other leave are covered in the Bill's minimum provisions but the details are complex and need more time to consider. Why for instance, is only 10 days of sick leave specified as being available for carer/family needs? Why are defacto same sex couples not included in definitions of family? Parents and other carers should have access to additional leave for caring purposes, otherwise their own sick leave entitlements are compromised by the needs of their dependants.

Work and family choices - a new framework is needed now

We refer the Senate Committee to our recent submission to the HREOC Striking *the Balance* inquiry (attached), as it is relevant to the IR reform proposals. We have recommended that HREOC request the government to fund and establish a Work-Life Balance Commission. This should be adequately resourced to run educational and research programs, which will monitor the effects of both social and legal changes underway. It should report annually directly to parliament and recommend policies and programs that will assist people in integrating their social and economic roles and increase social well being. This will fill gaps in current knowledge as well as assess the impact of changing demographics and policies.

Australian Workplace Agreements

As already indicated, we are concerned that women will lose out from a system premised on individual negotiation. There are many studies that show that **differential negotiating capacities** between most men and most women mean that women lose out when required to bargain as individuals for their terms and conditions. For example Lisa A. Barron from the Graduate School of Management at the University of California, Irvine, has shown that men and women negotiate different salary amounts. Using quantitative data from simulated negotiations and qualitative data from post-negotiation interviews, her study found that men made much larger salary requests than women.

While we recognise that there will be some workers who can use individual bargaining to increase their pay rates, too many others will not. This is not because they are in areas of low demand but because they are often workers who cannot effectively negotiate. The proposals will unnecessarily increase the inequalities amongst wage earners, by basing industrial conditions on bargaining power, not on merit or value of their work or on concepts of decency, justice and fairness. Inequalities between women and men's pay is a case in point.

There is considerable evidence in academic research and other reports that the gender pay gap is worse in AWAs - up to forty percent - especially those in the private sector. Recent analysis of Australian Workplace Agreements indicates that women do not do well under such agreements and that for many the notion of a fair and equal bargaining process is a fiction. Department of Employment and Workplace Relations data finds that in Australian Workplace Agreements penalty rates are lost, that one third of Agreements made no mention of annual leave and that sick leave is also traded off. Women's chances of negotiating for paid maternity leave as part of an AWA are very poor – the evidence is that only 8% of AWAs made provision for paid maternity leave. Given the continued high incidence of workplace pregnancy discrimination women may not be confident to propose such entitlements. Family-friendly measures beyond award or collective-agreement provision are rare in AWAs.

Professor David Peetz analyses of AWAs indicate a widening of the gender gap. He finds that the gender pay gap is worse on AWAs. Under registered collective agreements women received 90 per cent of the hourly rate of men on such agreements. Women on AWAs received only 80 per cent of the hourly pay of men on AWAs. He also finds that the outcome for part-time workers is worse, that the gap widens significantly when part-time workers are considered, where the difference paid on AWAs is 24 percent. Australian Bureau of Statistics data shows us that women on AWAs have hourly earnings 11 per cent less than women on collective agreements. There is sound international evidence that gender pay inequalities are exacerbated when the systems and outcomes of pay bargaining are not transparent. Australian Workplace Agreements are characterised by confidentiality requirements and an intentional lack of transparency. WEL is not aware of any research to the contrary. We are not aware of any measures in the Bill that will address this significant problem, such as the inclusion of a pay equity requirement or a provision that the AWA will be invalid if it offends against specified pay equity standards.

We are concerned that the abolition of the State industrial systems will impede the improvements made in the pursuit of equal remuneration cases in Australia. There have been important gains in the State jurisdictions, in particular the Equal Remuneration Provisions made in the NSW Industrial Commission. The Federal provisions have proven less effective in achieving Equal Remuneration and providing a proper way of re-valuing and remunerating womens' work. Furthermore the Federal jurisdiction requires proof that gender pay differences are the result of outright discrimination against women – this has led to many work re-valuation cases failing. Workchoices does nothing positive to improve gender inequality in wage outcomes, and is likely to make the position worse.

Human rights at work?

Australia is bound by a number of relevant international human rights instruments (UN Covenants and ILO Conventions) to provide a more effective legal and policy framework for ensuring equality at work, including equal pay and equal opportunities, and enabling women and men to combine paid work and family life on an equitable basis. The

requirements are detailed in the HREOC report *Striking the Balance* and in submissions to that inquiry, including that from Territory and State human rights agencies (http://www.hro.act.gov.au/gems/Striking%20the%20Balance%20submission%20.pdf)

WEL can see no indication in the Bill of a renewed Government commitment, or any practical measures, to meeting these obligations despite evidence of the need. We also contend that it appears the WorkChoices Bill does not comply with the ILO Conventions 89 and 98, or the spirit of the Conventions on minimum wages.

Conclusion

The examples provided here fit into a wider pattern of problems and setbacks for women in the changes. These changes appear to create further unfairness by failing to recognise genuine power differentials and inequalities. In addition, unfair dismissal procedures have protected whistleblowers who have been able to bring complaints about health and safety to the attention of employers. Under these new provisions, the whistleblower at the hospital in Toowoomba would have lost her job as soon as she complained about Dr "Death". Instead, her complaint has resulted in reform of the Queensland health system. We urge the Government to reconsider these provisions and ensure that workers are treated fairly by management in all enterprises. We refer the Committee to a recent report on measures of workplace fairness and their positive correlation with 'business climate' (see the Work Environment Index, PERI, University of Massachusetts). As far as we can see, and contrary to much of the language in and associated with it, the Bill primarily does the following:

1. Reduces choices for workers but increases the power of employers;
2. Creates particular difficulties for those with fewer or no bargaining capacities;
3. Bases wages and conditions on bargaining power regardless of real work value;
4. Increases inequalities between workers and risks that workers doing similar jobs will end up with different pay levels, related to bargaining capacities;
5. Increases gender inequalities as women will fall further behind under AWAs and the minium standards are set at a low benchmark;
6. Unfair dismissal changes put many workers at risk and allow for many forms of hidden discrimination; employers are being given the message that they can dismiss on a whim, and both the costs and complexities of claims for unlawful dismissal will increase;
7. Disadvantages new entrants to the workforce, and those who change jobs for a range of reasons may face serious difficulties;
8. Interacts poorly with proposed welfare changes as it increases the vulnerability to exploitation of those the Government is compelling into the workforce – especially sole parents and people with disabilities moved onto Newstart;
9. Seriously compromises attempts to move to better work/life balances;
10. Reduces protection for many workers – for example there is no scrutiny of lodged agreements; outworkers' employment status will be vulnerable and uncertain; reduced power of entry to workplaces for unions; bargaining agent system unlikely to help many low paid workers;

11. Sanctions reduced entitlements by abolishing the 'no-disadvantage test'. Ability to 'bargain away' basic conditions eg holidays, penalty rates etc will affect many worker conditions;
12. Fails to simplify the IR system and is hard on anyone who needs to understand their rights;.
13. Changes the way that Minimum Wages are set will result in a lowering of the minimum and the further ghettoisation of women into low wage work.

Recommendations for changes

1. Maintain and encourage the basic award conditions as the default position for employees ie that if no AWA is accepted by the potential employee, the relevant award applies and also will again apply after an agreement lapses;
2. Recognise the right of workers to ask for a collective agreement if a substantial proportion want this to happen ie over-ride the right of employers to refuse to negotiate one.
3. Retain the 'no disadvantage test' ie allow a worker to challenge the AWA on the basis that they believe that they are worse off than under the award;
4. Extend the basic (New Standard) conditions for AWAs and awards to include the right of parents to request part time work and extended maternity/paternity leave as in the AIRC decision but applying to parents of children up to six;
5. Provide the workers' right to request and/or refuse shifts/times of work that affect a worker's capacity to care for children. Where any of the above requests are raised by employees in good faith, and are refused, employers should be required to give reasons for any refusals and workers protected against penalties, if they make such requests.
6. Adopt new Equal Remuneration Principles similar to those found in the New South Wales Equal Remuneration Principles.
7. Provide for Outworkers' protection with a presumption of employment, as is presently the case under state legislation in NSW and elsewhere;
8. Retain tribunal access to look at both unfair and unlawful dismissal in small firms in an affordable, accessible, conciliation process;
9. Change the requirements under the welfare reform package to allow parents whose care and access responsibilities conflict with job demands to refuse the jobs or a shift without being penalised by cuts in income support.
10. Establish a national Work/Life Balance Commission to monitor the effects of the new legislation and report to Parliament.

Women's Electoral Lobby and National Pay Equity Coalition
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