



## ***Submission to the Senate Inquiry into Workplace Relations Amendment (Workchoices) Bill 2005***

### ***Summary***

***The implementation of the Workchoices Bill 2005 could have a disproportionate impact on the status of working women including gender pay equity, work and family balance and women's effective participation in bargaining processes to determine terms and conditions of employment. This in turn can have longer term consequences on women's capacity for economic independence, retirement and dependence on welfare.***

***Evidence from the National Working Women's Centres (NWWC) suggests that a substantial number of Australian women in a wide range of industries, occupations and employment arrangements experience serious problems in Australian workplaces despite legislative protections.***

***There is a need for resourcing women (especially disadvantaged groups) to access assistance in understanding of rights, obligations and bargaining processes and to uphold their entitlements. A commitment is also required to monitor the impact of industrial relations reform on women's pay equity and working conditions, women's participation in the labourforce and work and family balance.***



Mr. John Carter  
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Senate Employment, Workplace Relations and Education Committee  
Department of the Senate  
Parliament House  
Canberra ACT 2600  
Australia

Dear Secretary

***RE: Inquiry into Workplace Relations Amendment (Workchoices) Bill 2005***

The National group of Working Womens Centres (NWWC) are pleased to provide the following submission to the Senate Inquiry into Workplace Relations Amendment (Workchoices) Bill 2005.

Since 1994, the NWWC have played a significant role in service delivery for the Department of Employment and Workplace Relations (DEWR), its predecessor DEWRSB (Department of Employment and Workplace Relations and Small Business), and the Office of the Employment Advocate. The NWWC are now well known and well respected by women across Australia as a one-stop shop for information, advice and education about work issues. Combined, the NWWC were in direct contact with almost 15, 000 Australian women in the financial year June 2004-July 2005.

Recently, a study into internal labour market issues for women was conducted by the Queensland Working Women's Service (QWWS) in conjunction with Queensland University of Technology School of Business. This research explored the nature and the frequency of 17,000 reports of

workplace related concerns that had been made by individual women to the centre during a three-year period (June 2001 to June 2004). These findings suggested that a substantial number of women in a wide range of industries, occupations and employment arrangements experienced serious problems in Australian workplaces despite legislative protections.

This submission will consider the proposed Workchoices Bill and is based on information collected from all of the NWWC and the above QWWS research.

**The potential impact of the proposed Workchoices Bill 2005 on women's wages and equal pay:**

In Australia 60% of low paid (award dependent) workers are women, with women now constituting 45% of the workforce (ABS EEEH 2004) and the majority of workers on Awards being women. Award dependant women earn 83% of male Award worker earnings, while women on AWAs earn 60% of men on AWAs (ABS 6306.0 May 2004). Under existing legislative structures women have still not gained pay equity and Australia has amongst the highest rates of occupational segregation in the OECD, with female workers concentrated in a narrow band (namely service industry) of occupations.

Several State Industrial systems have now adopted pay equity principles that have facilitated award variations. Recent test cases in both the state and federal arenas have allowed pay increased in female dominated industries (i.e. child care workers and dental assistants) to be phased in over a number of years.

By far the majority of women contacting NWWC are employed in areas that are covered by Awards and encompass the retail, clerical and services industries. Personal services/sales and clerical occupations comprise the most commonly represented groups within these areas (approx 40 % of contacts). Overall these proportions are very similar to the percentages for industries identified for women in the ABS 2002.

As is seen in our client base, women employed in Australia dominate in the service industries, which are relatively low paid occupations. However within these industries women still earn less than men:

For example

In health and community services 14% less

In education 11.7% less

In retail 6.6% less

In the finance sector women earn 23.2% less

*(Source ABS Cat Nos 6303,6310).*

NWWC clients working across a number of industries including wholesale, property/business services, cultural/recreational, finance/insurance, health/community sector have registered concerns over incidents of less favourable treatment for women in their various workplaces in relation to their total remuneration package in comparison with their male colleagues. This includes access to a salary retainer, class of vehicle, mobile phones, redundancy packages and opportunities for promotion.

Women make up 52.7 % of all casual workers in Australia (ABS survey 6310 2004) and only one third of women who are in the workforce have access to leave entitlements (ABS year book: Labour earnings and benefits 2003) as this type of employment excludes female employees from all forms of paid leave apart from Long Service Leave. These exclusions reflect a further element of pay inequity when they persist over the long term particularly in relation to work and family responsibilities, job security, access to training and career prospects. Often such women are technically permanent in that they are engaged on regular weekly rosters with expectations of ongoing employment but are paid under a casual classification presumably as a convenience for the employer. The temporary nature of casual employment imposes barriers to securing financial loans which impacts adversely on the capacity of women to achieve financial security.

Gender pay inequity impacts on women's capacity to attain economic independence and has consequences on women's retirement and dependency on welfare. Under the proposed Workchoices Bill, the Australian Fair Pay Commission will periodically set and adjust minimum wages and minimum award classification rates of pay and casual loadings without apparent reference to the existing mechanisms for ensuring and facilitating pay equity. Persisting or increasing gender pay inequity will have negative consequences for women and welfare

dependency in an aging population and for the cohort of women who are anticipated to be working in jobs that do not compare favourably to average Australian earnings.

### ***QWWS Study***

*Remuneration concerns were reported by 5392 (27.3%) of the sample (17,000) and approximately equally by age background and occupational groups. Women from wholesale/retail, accommodation/cafes, and property/business services were the most common industries. 42% of the reported concerns were from permanent full time employees.*

#### *Case 1a*

*Client contacted centre for assistance (over 45). She was an award worker and was offered an AWA. This employee was the only female in the group and discovered that male counterparts had been offered higher remuneration and commission in their workplace agreements.*

#### *Case 1b*

*Client works in a large not-for profit organization and performs a management role. She is paid at Award wages and all the male managers are on a salary. Client has been provided with a 4-cylinder car and other male managers drive 6 cylinder cars. Client is not in the union and has not been successful in applying to have her position re-classified and has been told they will take away extra responsibilities rather than pay her a salary because all the other women would then expect the same thing.*

#### *Case 1c*

*Award free personal services worker (25-45) discovered her male colleague with same duties was paid \$16,000 higher wages annually, Employer has ignored her concerns and maintains is entitled to pay her minimum wage.*

### **The potential impact of the Workchoices Bill upon the terms and conditions of women's employment and on the bargaining capacity of women in low skilled industries.**

Women's ability to genuinely bargain for the workplace conditions that are desirable to suit work and family commitments may be limited particularly as they are highly represented in part time and casual employment holding low skilled or semi skilled positions. While traditionally female oriented skills are now more in demand such as communication and relationship building and

personal services, the growth of these industries as highly casualised employment, often means that these skills are not identified as highly desirable or attracting high remuneration. Women's bargaining capacity to determine appropriate terms and conditions is also reduced if they are negotiating outside of the employer's ambit of expectation.

However, even where women are highly qualified, fully mobile and require less flexibility (for example, the young, single, newly qualified nurse or child care worker) pay is kept low because this type of work is seen as 'natural' for women, rather than requiring *additional* learned skills and behaviour (as would be the case for men).

Through discontinuity of employment or change in employment status from full time to part time following family formation there is also downward pressure on women's wages and benefits and a decrease in training and promotion prospects with associated reduction in bargaining ability. Women are therefore less likely to be able to 'play the market' by negotiating a higher salary when moving between employment. Women therefore have less power at the negotiating table and are more likely to tolerate poorer pay and conditions.

While casual employment is favoured by many women because of perceived flexibility, clients have reported to the NWCC that employment arrangements are much more likely to favour the employer and are commonly marked by irregular hours, short notice start times and difficulty attaining needed time off to meet family responsibilities. NWCC are also contacted by large numbers of women who are long-term casuals (often up to periods of 10 to 17 years) for the same employer but who are not afforded the benefits of permanent employment such as sick leave or annual leave. According to a 2005 HILDA study the earnings gap between women part-time permanents and women part-time casuals is as great as 10%.

The NWCC have identified that women's awareness of employment terms and conditions and bargaining processes is minimal amongst our clients, particularly in low skilled occupations. This also impacts on women's capacity to genuinely achieve working conditions that suit their needs.

Evidence from NWCC client data indicates a growth in non-Award, contract and marginal employment engagements over recent years which includes many women working in low paid

positions such as nannies, travel agents, home-based industries such as domestic cleaning, and gardening and other ancillary work such as pet care and stable hands. Currently approximately between 2-5% of clients contacting the centres annually can be identified in these areas. These women often relay concerns of poor working conditions, uncertainty of rights and responsibilities and high levels of uncertainty around accessing entitlements.

The NWCC are concerned that under the Workchoices Bill, conditions and terms of employment for women currently covered by Awards will be reduced over time and will no longer underpin agreement making. Award and Enterprise Bargaining Agreement conditions will only be protected while they remain current or for the designated periods and upon termination can be easily be replaced with the more minimal agreement that are allowed under the new Bill. Australian Workplace Agreements can already be offered while Awards and EBAs are still current and numerous reports have been made by women to the NWCC of employer coercion for women to accept individual agreements that offer inferior conditions. Under the Workchoices Bill, AWAs will be able to significantly undercut Award conditions and similar coercion tactics could result in women being pressured to accept inferior conditions to maintain their employment.

Women in female dominated service occupations that have low union presence and have not typically demonstrated high levels of collective or individual bargaining initiatives could be subject to workplace conditions that are undifferentiated from award free employment. Without Award based wage rises, the lowest award wage classifications could easily fall below the minimum wage. As a result there could be a disproportionate concentration of female employees falling below the minimum wage safety net, who have access only to minimal legislative protections. The implications here for the potential devaluing of work in female dominated industries are of great concern in terms of skills recognition and appropriate classification and again pay equity. This erosion of working conditions may also translate to reductions in outputs and productivity and in the extreme create disincentives for participation of female workers in these industries.

*The QWWS 3 year study revealed patterns of internal labour market issues on a scale much broader than those dealt with by more formal, legal avenues such as industrial relations, anti-discrimination and human rights commissions. The findings suggest that despite legislative*

*structures there are still social and cultural processes that disadvantage women in Australia from fully and equally participating and negotiating their own” workplace agendas and that women often find themselves in workplaces that do not support their advancement, equality and needs as parents and care givers. Study revealed disproportionate representation of women in certain low paid occupations and within a narrow band of industries with limited scope for bargaining, undertaking career paths and training opportunities.*

*Case 2a*

*Woman 25-25 already working in Award based industry requested assistance with interpreting conditions in AWA and believed that these were significantly less than on the Award. Expressed high level of concern about entering into negotiation with employer as worried about being viewed as difficult, concerned that may be made redundant if did not accept.*

*Case 2c*

*Female paramedic at a mine site is award free worker and is long- term casual full time. All male workers on the site are permanent full time. Has had resistance to employer changing her status from casual to full time.*

*Case 2d*

*Nanny employed as casual (Award free) for \$14.00 per hour involving long hours, evening and weekend work. She is also required to do significant secretarial work for her male boss at the same rate of pay whereas she should be entitled to Clerical Award conditions for this work.*

*Case2e*

*Client was working under an Award when staff received notification that the basis of employment was changing and staff were moving to AWAs. They were advised that all positions at the organization would be covered by an AWA. It was made clear that this was the only basis for ongoing employment.*

*Case2f*

*Client worked for large organization was employed under an AWA. She soon became aware that other staff who were working under an existing EBA were provided with 2 extra weeks annual*



*leave, 5 extra days sick leave, meal breaks and shift loadings. Despite disputing the fairness of this arrangement it prevailed.*

#### *Case2g*

*Client was from CALD background and employed as a cleaner. She was offered an AWA that removed penalty rates and by her calculations the slight increase in pay did not compensate for the losses in overtime payments. She was told to take it or leave it, as there was no room for negotiation.*

### **The potential impact of the Workchoices Bill 2005 on women with family responsibilities**

The demographic changes that have occurred over the past 50 years have seen major economic, social and cultural transformations including an increase in women's workforce participation. These changes have meant that much larger numbers of workers (usually female) are attempting to balance both paid employment and family responsibilities. However the recent report 'Striking the Balance' (HREOC, p14) identified that women's employment continues to be the most affected by unpaid work responsibilities.

Legislative and Policy reforms have generally supported the corresponding demand for female participation and for flexible models of work. However, Australia has amongst the lowest workforce participation rates in the OECD for women with two or more children.

While the profile of 'work-life balance' and the need for organisations to provide more flexibility has received unparalleled attention in recent years, women have reported to the NWWC that balancing work and family responsibilities can be more difficult under agreements that expand the hours of ordinary work both during the week and on weekends, while also reducing or abandoning penalty and overtime rates

If this trend continues as will be facilitated under Workchoices, women will be less likely to be able to access the flexibility they need for their caring responsibilities especially given that these are often greatest in evenings and weekends. The abolition of penalty rates may mean that flexible, predictable hours will be harder to maintain without the after/over time disincentives.

The availability and affordability of good quality child care for families needs to be closely examined within the context of the Workchoices bill and the potential demands on parents (usually women) to be available for work in a context of deregulated hours and conditions.

An imposition of a six-month probation period may also disadvantage women as they move in and out of employment more frequently than men due to breaks for birthing, parenting and caring responsibilities.

*The QWWS data revealed numerous cases of reports of family responsibilities and pregnancy discrimination. Family responsibilities discrimination was reported by 372 women or 1.9% of the three year study group. Permanent part-time employees were more likely to report family discrimination compared to other employment status categories and nearly half were accounted for by the occupational groups clerks and sales/personal service workers. Pregnancy discrimination was reported by 657 women (3.3%) of the QWWS clients over the three year study period. More than half were accounted for by two occupational groups being clerical and personal service workers.*

*33 women in the QWWS study reported conflicts that occurred beyond maternity leave, when employers unilaterally altered hours or job-related duties making it incompatible with an employee's childcare arrangements. Additionally there were 35 cases in which employers were inflexible about work arrangements when an employees' child was sick or childcare arrangements were cancelled. 34 women also reported being threatened or actually dismissed, or having hours cut due to taking sick leave to care for a sick child. Childcare, in these instances, was denied due to the illness of the child*

#### *Case 3a*

*Client relayed concerns about excessive work requirements after hours and reported that new AWAs offered in her workplace stated that employees can work up to 50 hours per week before eligible for overtime.*

#### *Case 3b*

*Worker dismissed after 7 weeks, on probationary period because she asked for less hours as work and family pressures had led to stress related illness (shingles)*

*Case 3c*

*Employee with 2 children and pregnant with another requested advice about approaching employer who keeps changing her shifts at no notice and requiring her to do hours that make it very difficult with her family. Most evenings she cannot leave work until 7.20pm. Employee believes only option is to resign, as employer would not negotiate. This would forfeit her parental leave entitlement.*

*Case 3d*

*Client has been issued a written warning for having high absenteeism rate. It was identified that she has had 12 days off in 12 months due to her son being sick (medical certificate was provided). The child's, father was unable to look after the child as he works in remote locations and daycare can't look after sick children. Employer warned client that she was costing him money being absent, but that this has nothing to do with her performance.*

*Case 3e*

*Client had negotiated to work from 10-5pm 5 days a fortnight due to her family responsibilities. Recently found out she was pregnant. She was not eligible maternity leave. After informing employer she was told that taking time off to look after children showed lack of commitment to the workplace.*

*Case 3f*

*Client has recently become single parent and had negotiated with her large employer not to work evenings and weekends. New manager has told her that is no longer acceptable and she should get a new boyfriend to look after her child so she can work.*

*Case 3g*

*Client has worked same hours for past 3.5 years but employer now wants to change roster to night shifts and client can't work night shifts due to childcare responsibilities.*

**Women and unlawful dismissal protection**

The NWWC have collected a large amount of data on labour market issues and structures that impact on women. Besides the areas documented above, the centres receive a high volume of,

complaints and enquiries about gender based discrimination bullying/ harassment and sexual harassment. Many of these concerns simultaneously relate to concerns about unfair termination of employment. The QWWS three year study revealed that 29% of concerns about workplace harassment coincided with unfair dismissal issues. Women in such situations may be more likely to lose their employment if lawful grounds do not have to be substantiated. Removal of unfair dismissal laws provides less protection for women if employers counter discrimination claims with performance issue or other “lawful” or “operational” reasons for termination responses that will be permitted under Workchoices.

Women who have experienced discrimination in the workplace coinciding with unfair dismissal claims often opt for the option of having the matter heard in the Australian or state Industrial Relations Commissions in preference to the various human rights commissions. This is because of the shorter response time and the effectiveness of the Commissions in satisfactorily conciliating these matters as opposed to the lengthy (up to one year) delay in having matters listed for conciliation in the alternative jurisdiction. The removal of this access for large numbers of women working in small business (under 100 employees) will severely disadvantage women in having these matters tended to in a timely manner in order to redress both discriminatory and unfair work practices.

Under the new Workchoices Bill there is provision of assistance for legal advice and or representation for unlawful termination of employment, capped at \$4,000. This may, in the NWWC experience be inadequate. It is also not clear, nor apparent that community legal centres and NWWC will be excluded from providing assistance to clients under this scheme.

The NWCC also hold concerns about capacity of many women including those from regional, ATSI, low literacy and culturally and linguistically diverse backgrounds to gain access to information about the workplace reforms and to have an informed understanding about changes to their rights and obligations. Up to the present time the NWWC have identified that there are high levels of stress and anxiety for women created through job insecurity or perceptions of job insecurity.

Australian and overseas research (OECD) has not supported evidence that there is a connection between abolishing Unfair Dismissal laws and jobs growth.

*Although one of the social objectives through legislative provisions has been the elimination of discrimination against women in the workplace, QWWS is aware that harassment, sexual harassment and discrimination is still a concern for women at work. A staggering 5,000 cases of workplace harassment were reported to QWWS in the three- year period analysed. The seriousness of this problem reflected in the QWWS data was also reflected in the high numbers of concurrent reports of dismissal (26.7%).*

*A recent HREOC (2004) study revealed that overall 28% of adults in Australia had experienced sexual harassment, with over two-thirds of respondents identifying that they did not formally complain because of perceived lack of management support. Sexual harassment was reported by 1243 or 6.3% of the women in the three year study by QWWS. The issue was more frequently reported by 18-25 year olds than other age groups and was most commonly (more than half) reported by women working in clerical or sales/personal services occupations.*

*Sex discrimination was reported by 1037 women or 5.3% of the women in the 3 year study, reports were more likely to come from women under 45 years of age and was over-reported by women in the finance/insurance industry and personal services sector. It was under-reported in the health/community sector.*

*Race discrimination was reported by 264 women or 1.3% of the 3-year study sample, not surprisingly from women from NESB and ATSI backgrounds. Enquiries from primary industry were over represented in this category with more than three-quarters of the clients residing in a regional area.*

#### *Case Study 4a*

*Client was Harassed to have sexual relations with her with boss to keep her job.*

*When she told him no, she was dismissed.*

*Case study 4b*

*Client was distressed about ongoing sexual harassment at work. Harasser sent client text messages and comments has now bought them air tickets for her to travel to Melbourne with him; when caller said no he threatened her that if she did not go “life could be made very difficult for her”*

*Case study 4c*

*Client was short term casual and claimed she was dismissed because she would not provide her boss with oral sex.*

*Case study 4d*

*Three clients, all aged over 55 who were long-term casuals for a large retail outlet (average 12 years of service) made allegations of age discrimination and unfair dismissal against their employer when they were laid off without notice. In an organisational restructure only employees under 40 were retained. The employer maintained it was nothing to do with age but these particular female employees had scored less well in performance appraisals that were conducted by an outsourced agency.*

**Need for education of employers in small business**

The NWWC often receive requests for assistance or information from women who are small business employers and do not belong to employer associations. Many of these employers claim to be experiencing difficulty in interpreting existing legislation and developing and enforcing policies within their workplaces. In some cases when claims are made against these women as employers, they demonstrate complete disregard for legal entitlements or claim ignorance about these. Resources need to be devoted to promoting a better understanding of the new legislation amongst this group.

**Women’s access to advice and assistance under the Workchoices Bill**

The NWWC have been funded by the DEWR (previously DEWRSB) for 11 years to provide advice, information and advocacy to women on work-related matters. More recently funding contracts have restricted provision of services to women who come under the jurisdiction of the current Federal Workplace Relations Act. This has meant that a clear majority of women

accessing the services who are covered by state jurisdiction have not had access to these funded services.

Additionally the NWWC have not had any increases of funding during the 11 year period and have informed the DEWR of our limited resources to respond to the concerns of the high volumes of women requesting access to assistance. In recent years this has placed enormous pressure on the centres and their staff. Each year the centres face uncertainties about Federal funding that extends into new financial year before annual contracts are offered by DEWR. This impacts on the capacity of the Centres to strategically plan and to allocate resources where they are most needed by our women clients.

The NWWC anticipate that demands for assistance from women will continue to grow with the introduction of Workchoices and that these demands will soon outstrip the resourcing capacity of the centres. Additionally with the legalistic and complex content of the Workchoices Bill a significant amount of current resources will need to be devoted to developing expertise in interpreting the new Act, in order to meet our current contract requirements. It will be also necessary for the NWWC to have access to staff with legal qualifications to represent clients with unlawful dismissal claims and other matters that are to be excluded from the AIRC jurisdiction such as superannuation, and long service leave.

Although women employed in more precarious forms of employment may generally be considered to be more at risk for internal labour market problems, the majority of women who have historically contacted the NWWC for assistance held permanent full-time jobs. This high proportion of calls from full-time women is likely to be because their permanency affords them more rights and are willing to seek redress should problems occur in their workplaces. However, HREOC (*Pregnant and Productive Report 1999*) documented that it is casual and contingent employees who are most vulnerable and most likely to under-utilise and under-report their concerns and issues such as discrimination and harassment at work. Assisting women achieve workplace justice and breaking the silence with systems and support processes such as those provided by women's organisations like NWCC is essential to assist women effectively be able to uphold their rights and to participate in negotiating relevant workplace agendas.

We request and recommend that the NWCC are resourced in a timely manner that coincides with the implementation of the Workchoices Bill to be able to continue to effectively assist women with their workplace issues.

The NWWC recommend that government and independent research be commissioned to examine the impact of the Workchoices reforms on women's working conditions, workforce participation, ongoing internal labour market issues and pay equity.

Should the Committee require any further information please contact Kerriann Dear on 07 3211 1440.

Yours sincerely

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