

“TELL ME WHAT YOU WANT,  
WHAT YOU REALLY REALLY WANT”

WOMEN AND THE NEW INDUSTRIAL  
RELATIONS ENVIRONMENT

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Paper presented to the 11<sup>th</sup> Women, Management and Industrial  
Relations Conference, 21 July 1999

At the peak of their recording career, the English pop group, The Spice Girls, captured the imagination and the hearts of men and women across the world. Everyone it seems wanted to be close to young women who screamed about the need to “tell me what you want, what you really, really want”. This suggests women’s voices empowered with individual will and choice, buzz words of the market driven agenda of a new Britain. Transferred to the material world, it also assumes that the best way for women to get ahead is to just “do it”. The question here is are women’s voices actually being heard in the world of work and family? In an economy and society still heavily structured on a patriarchal model, are women able to exercise power and choice in the same way as men, and with the same commensurate rewards?

Changes to the industrial legislative environment in Australia, including the proposed new amendments to the Workplace Relations Act, have refocused attention on the central material issues of equal pay, hours of work and part-time and casual employment. For women to exercise voice, they must be able to work in an environment which accords them equality, and which is free of both direct and indirect discrimination. So, in 1999, what is happening to women workers, and what do they say they want from a new industrial relations system?

These questions are important not just for women. As new types of employment continue to grow in a global environment, men will also find themselves located in more precarious employment. Men will look more like women in terms of their labour market location, with subsequent changes to their industrial power. Only 30% of workers in this country currently work a standard 35-40 hour working week. Over 30% work overtime, with two thirds doing so without receiving extra pay. One in four workers is employed on a casual basis, and three-quarters of part-time workers are female. Australia also has the highest rate of temporary employment amongst the OECD

countries with one-fifth of enterprises using agency workers and 35% outsourcing some functions.<sup>1</sup>

The shift towards precarious employment has been presented by employers and the current Government as desirable in the interests of workers, particularly women workers, enabling them to combine paid work with their family responsibilities. While it is critical that both unions and management recognise the need to accommodate “family friendly” arrangements, such arrangements must recognise that both men and women have “family” responsibilities. Family responsibilities also vary across the life cycle and have different cultural manifestations dependant upon the nature of ‘family’ for Indigenous workers and workers from non-English speaking backgrounds. Thus family friendly arrangements need to recognise that men and women opt for part-time work to care for dependents at particular times, and for particular reasons.

The worst outcome for women is one that reinforces their secondary status in the labour market, ie permanent part-time work is all that is appropriate for women. To return the debate to the issue of “pin money” would be reprehensible, given that the majority of Australian women are in paid work, making up some 40% of the entire workforce. Over a million, have dependent children under the age of 15, and near 170,000 are sole parents. Yet 44% of all women workers are employed part time, and women make up 72.4% of all part time workers and 63% of casual workers.<sup>2</sup> We need to develop strategies that break down the structural discrimination that currently exists in the labour market - it is not just about gender segmentation, it is now increasingly about mode of employment.

## **FAMILY FRIENDLY FLEXIBILITY AT A PRICE**

While women are able to indicate their preferences in balancing working time with family responsibilities, there is a growing body of evidence that this at a price, rather than a choice freely made. Obviously workers with most power over setting these dynamics are those on higher incomes, and

often associated with professional work. Even here, we know from the case of Marea Hickie, a contract partner in a law firm, that employers find it difficult to change working practices to reflect a real commitment to valuing their women workers, and to valuing the familial responsibilities of all their workers.

In the higher education sector, the recent National Pay Equity study teased out the issue of family responsibilities and “choice “. For academic women, some 16.6 % work part time, compared with 6.1% of male academics. The pattern is similar for general staff - 18.3% of women work part time, compared to 7.3% for men. Men and women who worked part time were then asked key questions about their career aspirations, spouses employment, responsibility for child care, and how these influenced their “choice” for part time work.

Among academic staff, career aspirations were similar across gender - women were just as eager to move up the career ladder as men, and to move location if necessary for their careers. While nearly half of academic staff said they had dependent children, the pattern of caring for those children was complicated by the fact that over 90% of women academics had a spouse who worked full time, compared to 57% of male academics. Consequently, when asked who was the main carer of children, only 4.3% of men said it was themselves, and only 44% said it was shared equally. For those women, choice was clearly highly constrained. Double the number of women than men said that family responsibilities influenced their work hours.

For general staff, the male/female difference over choice to work part time is even more glaring. Of permanent part timers, over 44% of women said they worked part time because of family responsibilities, compared to 13.3% for men. Most men made choices for a variety of reasons - some because that was all that was available, others for personal preference or to fit in with study, and some because of family responsibilities. When the same group

was then asked who actually did the caring, the pattern was even clearer. Near 60% of women indicated themselves as the main carer, compared to 0.7% of men. For these staff the “choice” was dictated by the domestic division of labour. Yet we know from surveys done by HREOC and ACIRRT that many people working part time want to work more hours.

Given that part time work is an increasing pattern, how do we break down the historic capacity for it to become a female ghetto? We need to ensure that there is a real choice for the employee, rather than just management prerogative. Currently there are no provisions in the Workplace Relations Act which facilitate an employee’s right to go to or, more importantly, revert from part time employment. Provisions in awards to this effect, if they have survived the process of award stripping, are rare. Yet flexible hours are there in agreements and in AWAs. There are however real differences. In AWAs, flexibility generally means averaging of hours, while in collective agreements, the most common provision was to allow for banking of various leave arrangements to accommodate, among other things, school holiday absences.

## **BARGAINING IN AN UNEQUAL ENVIRONMENT**

The New Zealand experience indicates that when left to a bargaining environment, women are more likely to be disadvantaged when it comes to hours. In New Zealand women are more likely than men to be on contracts with a Monday to Sunday week. They are also less likely to receive penalty rates for working unsociable hours - 62% of women are on contracts without penalty rates compared to 43% of men. This is particularly so in hospitality and retail.<sup>3</sup>

Our current industrial landscape is dominated by enterprise bargaining. But not everyone bargains, and not everyone has equal power in the bargaining process. The award system is utilised much more by women workers because of the industries in which they are located, the size of their workplace, and the traditional lack of over award payment systems. Yet,

women do bargain, and actively in the industries with high feminisation rates. As the table below shows, some 41.2% of all agreements are from feminised industries, matching broadly female participation in the workforce.

### **INDUSTRY DISTRIBUTION OF ALL CERTIFIED AGREEMENTS AND INDUSTRY FEMINISATION RATE**

(Includes only those industries where feminisation is above 40%)

<b>INDUSTRY</b>	<b>% OF ALL AGREEMENTS</b>	<b>FEMINISATION RATE %</b>
TCF	1.4	58.0
RETAIL	3.3	51.4
BANKING	1.6	60.4
INSURANCE	5.5	44.9
PUBLIC ADMIN.	8.8	45.1
HEALTH SERVICES	4.1	77.0
EDUCATION	5.9	68.0
COMMUNITY SERVICES	4.6	78.2
RECREATIONAL SERVICES	7.0	51.4
<b>TOTAL FOR FEMINISED INDUSTRIES</b>	<b>41.8</b>	
<b>OTHER</b>	<b>58.2</b>	

Source: Adapted from unpublished data provided by Richard Hall (ACIRRT)

What this data does not take into consideration is the large number of small workplaces, or even private workplaces (homeworkers, family day care, cleaners etc). Here workers often have no award, and are paid the state minimum wage where it exists. In the retail industry only 69.2% of women are covered by agreements, while in accommodation, cafes and restaurants the figure drops to only 41.3%. The ACTU has estimated that 50% of women working part time, and 20% of full time women workers are dependent on awards.

The award system has also been critical in ensuring that the pay gap is minimal, and reducing the pay equity gap over time. Since national or industry collective bargains are prohibited under the Workplace Relations Act, women who work in small workplaces not covered by agreements, or where they are not in a position to exercise power where bargaining takes place, because they are part time or casual, depend upon movements in award rates through safety net adjustments. Thus the Living Wage strategy is an important gender strategy and essential in preserving equity within the base rate.

New changes put forward by the Government would restrict even further the allowable matters in awards, reduce the Commission's power to make decisions regarding incidental matters, and ensure that awards are regularly stripped back before the safety net adjustment pay rises are granted. Further the restrictions on moving from State to Federal awards, and outsourcing the conciliation role of the Commission, will impact on women disproportionately to men because of their reliance on the award system.

More broadly, an increasing reliance on individual bargaining, and less on collective bargaining, allows the existing gender dynamics of the labour market to harden. Women are still concentrated in industries that are not traditionally industrially or economically strategic. Formal bargaining is strongest in the manufacturing, transport, communications and construction industries, and weakest in retail, hospitality and personal services. However in the last two years there have been changes to this dynamic among health and education workers who have to survive budget cuts, contracting out, and loss of service quality. Increased militancy has also occurred in the highly professionalised areas of these industries - higher education staff and medical and para-professional staff in hospitals.

Less scrutiny of AWAs and agreements by the Commission, and particularly no regulation of AWAs, opens up the industrial system to discriminatory behaviour. At the level of an individual enterprise, the facility to make agreements with one group of workers, rather than being required to cover all or a separate part of the enterprise, can only intensify poor management practices and pay relativities against women.

## Growing Pay Equity Gap

The ACTU used International Women's Day this year to launch a major campaign on equal pay. Historically Australia's pay equity gap has been small, due largely to the strength of non-discriminatory award rates within industries. Yet ABS data for the period 1996-1998 is now telling us a very different story. The pay equity gap is stalling in retail and manufacturing, increasing in education and property services, and significantly widening, by near 12%, in hospitality. Far from making real gains here, we are beginning to see a overall growth, rather than reduction, of the pay equity gap.

### MOVEMENTS IN THE GENDER GAP 1996-1998

		1996	1998
Retail	A*	87.10	87.3
	B	68.5	69.2
Health	A	74.9	76.6
	B	63.8	68.0
Education	A	89.5	87.5
	B	78.9	79.2
Property & Business Services	A	77.6	75.5
	B	67.5	67.0
Manufacturing	A	82.1	82.8
	B	71.5	71.0
Hospitality	A	93.9	89.7
	B	79.9	68.1

\*A: Average weekly adult full-time ordinary time earnings

B: Average weekly total earnings

All comparisons are made on the basis of figures for the November quarter.

Source: ABS Cat. 6310.0 August 1998

There is no doubt that an increasing move towards the contract environment, as in New Zealand, will widen the pay gap. All evidence since the introduction of the new legislation suggests that the gap will widen fast.

From November 1992 to December 1996, the pay gap more than doubled - from \$7.75 per week to \$18.87.<sup>4</sup>

### **Union Membership Delivers Rewards to Women**

All evidence suggest that women's wages and conditions are better when governed by union agreements and awards - particularly if part time.

	<b>Union</b>	<b>Non Union</b>	<b>Difference in Dollars</b>	<b>Differential %</b>
<b>Total</b>	\$649.00	\$567.00	\$82.00	14.5%
<b>Male</b>	\$727.00	\$686.00	\$41.00	6.0%
<b>Female</b>	\$543.00	\$436.00	\$107.00	24.5%
<b>Full-time</b>	\$733.00	\$713.00	\$20.00	2.8%
<b>Part-time</b>	\$325.00	\$256.00	\$69.00	27.0%
<b>Permanent</b>	\$681.00	\$675.00	\$6.00	0.9%
<b>Casual</b>	\$396.00	\$345.00	\$51.00	14.8%

Source: ABS Cat. 6310.0 August 1998

Whenever employers have unlimited discretion over pay rates, assumptions about the value of women's work and preconceptions about the role of women in the workforce result in demonstrably lower rates of pay. While there is still research to be done on patterns in AWAs, there are preliminary indications that they have been made for similar reasons to those used to justify over award payments. The reasons for over award payments are:

- merit/skill (subjective and often gender biased)
- award rate too low - over awards are rarely paid for this reason in areas of women's employment
- seniority (directly discriminatory)
- higher responsibility (dependent on work organisation)
- market rates (more prevalent in male industries/occupations)

- union agreement
- incentive (subjective)
- historical reasons (likely to be discriminatory)

More importantly, work done for the regulatory review of the Affirmative Action Act by Peetz, Gardner, Brown and Berns, on “A Gender Equity Index and Australian Workplace” found three features which correlated with high performance in gender equity :

- the sector in which the workplace is located (public sector is best)
- size of the organisation (above 100 employees is best)
- having higher levels of union density (above 25% unionised)

Thus changes to the industrial environment deliberately aimed at decreasing union presence, restricting entry, making the taking of industrial action more cumbersome, attacks on pattern bargaining, longer notice periods for unions, and so on, are also going to impact on women. Should the amendments be passed, then the bargaining environment will certainly not be fair and reasonable. It is increasingly being loaded in favour of the employer - maximising their ability to not have regulation, while minimising the unions potential to protect their members through regulation. This is bad for women workers.

When examined in light of significant international developments in industrial relations, particularly in the European Union, the second wave legislation's premise is wrong. There, unions are not seen as an obstacle to proper employment arrangements and regulations and accountability are seen as critical to the process of change.

A recent inquiry in the U.K., involving some eighteen months of considered examination of higher education pay and conditions, led to the release of the Bett report in June of this year. Among the recommendations of the report

are provisions which seek to increase regulation of employment matters within and between universities. Examples of this are:

- Development of a common pay spine and common core conditions of employment as minimum entitlements, including holidays, special leave, sick pay, maternity benefits, access to grievance procedures, trade union duties and health and safety consultation.
- A common baseline of working time arrangements for all academic staff to offer protection against work overload and to maintain quality.
- Reduced use of fixed term and casual employment, with redundancy pay for staff on fixed term contracts of more than a year.

The Bett Committee recognised that an undertaking as significant as the complete overhaul of salaries and conditions in universities required a cooperative approach, with recognition of the role of union representatives in effecting positive change. The Second Wave legislation identifies union representatives as an obstacle to the exercise of managerial prerogative, which is afforded heightened status as the driver of workplace change.

## **UNION RESPONSES**

Unions have responded to this environment in various ways. Key union strategies positive for women have been

### **(1) Pay Equity Inquiries**

The most wide-ranging was the NSW Pay Equity Report, released in December 1998, and its findings are very important. While it believed that the industrial relations system, with some modifications, is the most effective forum for rectifying pay equity, it also found considerable inequity and undervaluation of women's work in the existing NSW system.

The undervaluation of women's work was due, in their view, to gendered assumptions in work value assessments, occupational segregation (which may cause female industries to be undervalued because they are female dominated) and a number of other factors to do with the poor bargaining position of female dominated occupations and industries. The Inquiry foreshadowed the need to develop new non-gender-biased work value principles, and a process which allows the examination of possible undervaluation of work in female dominated industries

In particular the Report found that female dominated occupations such as child care, hairdressers, beauty therapists, outworkers, trimmers undertaking seafood processing and librarians were undervalued.

Whilst no formal finding was made, it noted the Federal Commission's endorsement of the principle that female clerical workers should receive the same "actual" rate of pay as metal industry tradespersons.

In July the WA Trades and Labor Council will be launching its Pay Equity Inquiry, and of course, the NTEU commissioned research on pay equity in higher education. Other industry studies should follow, either separately or, where appropriate as adjuncts to inquiries in the state jurisdiction.

**(2) Use of the Sex Discrimination Act to underscore arguments for making new awards.**

My own union, the NTEU, was successful in establishing a new award under the Workplace Relations Act restricting contract employment in the higher education industry. This brought to an end the existing system of rolling contracts - often for over twenty years. The Higher Education Contract of Employment Award, or HECE, applies to all staff, and has already altered workplace behaviour. One aspect of the case before the Commission was to use the Sex Discrimination Act to infer indirect discrimination based on the disproportionate numbers of academic women at the lowest level, and without tenure. Although it was not conclusive in the case, I suspect that the

facility for the Industrial Relations and Sex Discrimination Act to work together will encourage others to explore this mechanism to improve the pay and conditions of women workers through the award stream.

### **(3) Equal Remuneration Cases in the Commission**

The Federal Industrial Relations Commission does have the power to fix unequal pay through special provisions for equal remuneration for work of equal value. First inserted in 1994, and defended in the 1995/1996 debate over the Workplace Relations Act, these provisions mean that unions can mount cases for rectification of work value anomalies based on sex discrimination. The HPM case brought by the AMWU is perhaps the best known. It was brought on behalf of 300 female process workers and 20 female packers at the Sydney electronics firm HPM Pty Ltd. Settled in December last year, it resulted in the women receiving, in the course of a two and a half year agreement, the same rate of actual pay applicable to their male colleagues employed as general hands and storemen. The agreement also abolished the performance based wage system which applied to male jobs only and the discretionary over award payments which were paid almost exclusively to men.

The AMWU is now running a similar case against The Age on behalf of telephone sales advisers, seeking to have them paid an equivalent rate to male based trade positions.

### **(4) Family Friendly Policies in Collective Agreements**

While strongest in the public sector, education and health, there is building up a solid body of family friendly clauses in enterprise agreements. While the main tension centres around flexible hours, there has also been incorporation of maternity and paternity leave, provisions for part time workers and regulation of casual employment.

### **(5) Public Campaigns**

The best example here is the FAIR WEAR campaign. Built on a coalition of churches, community and textile unionists, the campaign had great success in bringing the issue of exploitation of outworkers to public attention. Demonstrations were aimed at encouraging (embarrassing) retailers to sign a Code of Conduct, agreeing to source their garments from manufacturers who pay outworkers legal entitlements.

The new industrial environment will be a very difficult one for many women workers. The more the labour movement's strategy is inclusive of, and determined by those women, the more relevant and constructive for all workers will be the labour movement's response to the current amendments to Australia's Workplace Relations Act heading to the Senate. Otherwise we will not have heard what it is that women "really, really want".

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<sup>1</sup> Speech by Jennie George to 6<sup>th</sup> FIET World Women's Conference, 12<sup>th</sup> March 1999

<sup>2</sup> ABS Cat 6203 Labour Force, 1999

<sup>3</sup> Suzanne Hammond and Raymond Harbridge "The Impact of Decentralised Bargaining on Women: Lessons for Europe from the Antipodes" in *Bargaining in Diversity: Colour, Gender and Ethnicity* ed. Barry Fitzpatrick

<sup>4</sup> *ibid.*

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