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Chapter 1

Industrial Relations Reform and EEO

Gary Johns

The year to mid 1994 has been a period of significant developments in industrial relations with the introduction of the *Industrial Relations Reform Act* and the focus shifting to enterprise bargaining. The shift towards enterprise bargaining has generated concerns about possible effects on women in the workforce.

These concerns have been focused on as to whether women may equally partake in the bargaining process; will they be taken fully into account, or will they be disadvantaged? The outcome of this may be lower wage outcomes and changes to work practices that impact negatively on women. The Government was aware of these concerns during the development of the new act and has included a number of safeguards for all workers, as well as specific measures for women and other potentially disadvantaged groups.

A key aim of the Industrial Relations Reform Act is to speed up the spread of enterprise bargaining throughout all sectors of the economy. The new act builds on measures already contained in the Industrial Relations Act to protect workers who might otherwise be disadvantaged in a more devolved industrial relations environment. These protections have particular relevance for women workers. The award safety net of minimum wages and conditions is charged with ensuring that the award system provides secure, relevant and consistent awards.

Employee Protection

Minimum award wages and conditions continue to directly protect employees unable to negotiate enterprise agreements. They also act as the benchmark for the "no disadvantage test" for employees moving on to certified or enterprise flexibility agreements. The legislative reforms reflect and reinforce the importance of maintaining the minimum rates awards framework. In achieving consistency across awards, the Industrial Relations Commission will be expected to maintain stable and appropriate relationships between job classifications.

The legislation requires that the commission review awards every three years to make sure that they do not contain a number of specified deficiencies. As part of this process it must ensure that awards are written in plain English; that they do not contain provisions which discriminate on a number of grounds including sex, marital status, family responsibilities and pregnancy; and that they meet safety net requirements where appropriate.

While the award safety net remains the primary mechanism for protecting minimum wages and conditions in the federal system, it is complemented by the introduction of minimum entitlement provisions. These provisions provide access to key minimum entitlements for those workers who currently do not have adequate and appropriate protection established through award coverage or state legislation. The minimum entitlements provisions apply in the areas of minimum wages; equal remuneration for work of equal value without discrimination based on sex; certain rights in cases of termination, including protection against unfair dismissal; and 12 months shared unpaid parental leave.

The commission cannot certify or approve an enterprise agreement that is inconsistent with minimum entitlements concerning minimum wages and equal remuneration for work of equal value. An agreement must also comply with laws and orders by the commission on termination of employment and laws on parental leave.

The entitlement for equal remuneration for work of equal value is particularly significant to women. All aspects of remuneration are covered: over-award and non-monetary benefits, as well as award pay. The commission is now able to make orders to ensure that women and men workers receive equal remuneration for work of equal value without discrimination based on gender. The commission is able to make such an order on application by an employee, a relevant trade union, or the Sex Discrimination Commissioner. The legislation does not deny access to any other machinery for obtaining equal pay for work of equal value, for example, via awards of industrial tribunals or determinations by sex discrimination authorities.

Concern

Many women workers have been concerned that they might be disadvantaged by workplace bargaining. In response to this genuine concern, the Reform Act complements the safety net protections with direct protections for employees who move on to enterprise agreements. The Government has provided strong safeguards for both enterprise flexibility and enterprise

bargaining agreements. Our aim is to ensure that the increased focus on the workplace is not at the expense of employees' overall wages and conditions.

Perhaps the most important of these protections is the no-disadvantage test which protects employees moving on to single business Certified Agreements or to Enterprise Flexibility Agreements. Under this test, individual award conditions can be changed provided that, when their terms and conditions are taken as a whole, employees are not disadvantaged.

Importantly, though, the no-disadvantage test is intended to protect well-established and accepted standards that apply across the community, such as maternity leave standards, hours of work, parental leave, minimum rates of pay, termination change and redundancy provisions and superannuation. The no-disadvantage test encourages commitment to workplace reform because employees have the security of knowing that they will not be worse off by entering into an enterprise agreement.

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In addition to the no-disadvantage test, the Reform Act introduces a number of new protections for workers moving on to enterprise agreements. A key safeguard is in the area of protection against discrimination. There are now new objects in the Industrial Relations Act to make it clear that the Industrial Relations Commission is to perform its functions in a way which helps to prevent and eliminate discrimination against employees for a wide variety of reasons including sex, marital status, family responsibilities and pregnancy.

The commission continues to be expressly required to take account of the *Sex Discrimination Act 1984* and the *Racial Discrimination Act 1975* in the performance of its functions, and is now also required to take into account ILO Convention 156, which concerns workers with family responsibilities. As well, amendments to the Industrial Relations Act which came into effect in January 1993 and which extended the Sex Discrimination Act to cover new awards and certified agreements continue to be in force. These protections will encourage the commission to perform its duties in a manner which avoids discrimination against women.

Workers who move on to enterprise agreements have an additional safeguard. The commission is now required not to certify or approve a certified or enterprise flexibility agreement if it discriminates for a number of reasons, including reasons particularly relevant to women such as sex, sexual preference, marital status, family responsibilities, and pregnancy.

Another feature of the Reform Act of particular relevance to women is its strong focus on consultation in the making of enterprise agreements. The commission must be satisfied that all employees have been properly informed and consulted about the content of an agreement and its consequences.

Vulnerable Employees

In addition the commission is required to identify vulnerable employees and ensure that they have been properly informed and consulted about the certified agreement. The legislation specifically mentions women, persons whose first language is not English and young persons as examples of employees whose interests may not have been sufficiently taken into account in the development of the agreement. If the commission finds that there has been a failure to appropriately consult such employees, it is required to make whatever orders it thinks necessary to remedy the failure and its effects.

The Reform Act also ensures that certain groups of workers cannot be unfairly excluded from agreements. In the case of enterprise flexibility agreements, agreements must cover all employees covered by federal awards at an enterprise or a geographically distinct part of an enterprise.

For single business certified agreements, agreements may cover either the whole or part of a single business. However, where certification of an agreement is sought, which relates to a part of a single business, the commission is required to scrutinise it carefully to ensure that this "part" has not been artificially devised to exclude certain categories of workers. The commission may refuse to certify an agreement that unfairly excludes workers who might reasonably be covered by it. These requirements will help to ensure that the segregation of women in certain occupations within an enterprise does not mean that they are unfairly excluded from agreements.

The introduction of enterprise flexibility agreements has widened the access of enterprises to formal enterprise bargaining, particularly in the small to medium-sized business sector, and in non-unionised workplaces. These are areas in which women workers are strongly represented.

A majority of employees must approve the agreement; if unions respondent to relevant awards have members at the workplace, they must be given an opportunity to take part in negotiations and all unions respondent to relevant awards must be given an opportunity to be heard when the application for approval of the agreement is before the commission.

The Reform Act provides for an annual report on developments with enterprise bargaining. The

reporting provisions require information to be provided on the impact of enterprise bargaining on women, part-time workers and migrant workers. The report will be produced by the Department of Industrial Relations and will involve wide-ranging consultation. It will be an important tool in assessing how women fare under enterprise bargaining.

Features of Women's Employment

There are certain features of women's employment that may affect their access to enterprise bargaining. The existence of these safeguards and the requirement to report on the impact of enterprise bargaining on women recognises that there are a number of features of women's employment which may affect their access to enterprise bargaining. The pattern of female labour force participation and experiences within the workforce tend to be different to those of male workers.

Key areas of differences are that women are concentrated in particular industry sectors of the economy and are generally employed at lower occupational levels within these sectors. Women work in a narrow range of occupations, with more than half of all women workers classified as clerks and salespersons. Women tend to be employed in industries and occupations where there may be difficulties in measuring productivity; women have distinctive patterns of employment such as being concentrated in part-time and casual employment; and women have a lower rate of unionisation than male workers.

Government Initiatives

In order to ensure that the potential benefits from enterprise bargaining are realised, the Government has in place a range of broad policy strategies to support the achievement of equitable enterprise bargaining. One of the key policies is the Government's equal pay strategy which has involved promoting the restructuring of awards. This is being pursued through the removal of discriminatory provisions, the establishment of fair wage relativities and the development of career paths based on skills and expertise. It has also involved the establishment of the equal pay unit in the Department of Industrial Relations. This unit provides the Government with specialist advice on wages issues for women workers and places a major emphasis on monitoring the impact of workplace bargaining on women.

The Government remains strongly committed to pursuing equal pay for women. The Industrial Relations Reform Act contains major safeguards for women. There has been a number of media reports recently that have put forward the view that enterprise bargaining has been responsible for a widening of the gender earnings gap. There are a number of problems with this view. Firstly, the Australian Bureau of Statistics data released recently upon which many of the reports have been based was collected in May 1993. While this was a year and a half after enterprise bargaining was introduced into the federal system, it was also over a year ago. The figures are also only from a sample survey. The spread of enterprise agreements has increased significantly during the past year and now cover companies in the service sector that employ a large number of women. Other surveys carried out by the Australian Bureau of Statistics earlier this year showed little change in the gender pay gap from November 1991. It is clearly too early to begin to say that enterprise bargaining is responsible for increasing pay inequities.

However, the Government is aware of concerns that this may occur. The strong safeguards that are built into the act and the annual reporting procedures will assist in ensuring that women's wages levels are at the minimum protected, if not advanced by enterprise bargaining.

There was recent considerable coverage of a submission put to the Australian Industrial Relations Commission by the Sex Discrimination Commissioner, Sue Walpole. The particular emphasis of the inquiry would be on establishing work value concepts, measurements and processes for investigation which are free of gender bias. Also, the submission sought that the commission should establish a new equal pay principle based on the findings of this inquiry and in view of the issues raised in relation to equal pay discrimination generally, and removing discrimination from awards.

The Commonwealth's representative at the commission put forward the Government's view that we do not propose or support a broad, all-encompassing work value inquiry considering that such issues could be addressed in the context of particular cases. It would be the Government's expectation that an inquiry of this nature would confirm generally the appropriateness of relativities have been established. This, of course, does not preclude gender issues and changes from relativities being considered for particular cases. In fact, the Government has consistently stressed the need for this avenue to remain clearly open.

Conclusion

Legislative changes to the Industrial Relations Act provide both safeguards and opportunities for women workers. The new legislative framework will promote productivity and efficiency improvement in workplaces while recognising that protecting employees is crucial to the overall success of enterprise bargaining. Enterprise bargaining presents opportunities to review current practices and procedures and identify areas where there are impediments to equity.

As minister responsible for the Australian Public

Service, I am pleased with the progress we are making in integrating conditions for women workers into public sector agency bargaining agreements. The Government has a clear responsibility to practise what it preaches. A number of the recent agreements reached in the Australian Public Service address the needs of workers with family responsibilities through the provision of carer's or family leave, access to an additional four weeks leave per annum using salary averaging and commitment to developing childcare policies.

The federal Labor Government has shown its commitment to ensuring the elimination of discrimination against women in the workplace both in the Industrial Relations Reform Act and through other legislative and program measures.

The Government is very confident that enterprise bargaining can deliver significant benefits not only to the economy as a whole, but to individual sections of the workforce such as women. The world of enterprise bargaining is a new and brave one for Australia. There is a natural fear of the unknown. It is easier to reject the unknown than to embrace it. However, Australia has little choice but to embrace the unknown.