

I am here representing the National Foundation for Women in place of Marie Coleman who is prevented from coming today because of illness. Marie was asked to speak on the changing industrial environment particularly in relation to

- WorkChoices
- Forward with Fairness
- Productivity Commission Inquiry into paid parental leave.

I regret that I have had very short notice on this and I apologise if I am not fully across all the issues.

The NFAW was launched in 1989, funded by a bequest, to the cause of feminism from the late and wonderful Pamela Denoon, who spent many years as a key player in the Women's Electoral Lobby and campaigned for many feminist causes.

The National Foundation for Australian Women is dedicated to promoting and protecting the interests of Australian women and ensuring that the aims and ideals of the women's movement and its collective wisdom are handed on to new generations of women.

Its objectives are

- To ensure that the aims and ideals of the Women's Movement and its collective wisdom are handed on to new generations of women; and
- To advance and protect the interests of Australian women in all spheres, including intellectual, cultural, political, social, economic, legal, industrial and domestic spheres.

And it does this by

- promoting and encouraging discussion and debate
- linking and improving communication between women's organisations
- promoting research and the collection, evaluation, dissemination and interchange of information
- supplying the broad Women's Movement with information
- monitoring and reporting on the situation of women;
- financial and other assistance and encouragement to specific studies, research, conference, seminars etc;
- sponsoring lectures
- generally taking any other action as is or may be appropriate for advancing the interests of Australian women

NFAW is affiliated with two National Secretariats funded for national women's organisations by the Commonwealth Office of the Status of Women- Womenspeak and Security 4 Women.

In 2006 NFAW initiated the What Women Want Consortium of 60 national women's organisations with constituencies of more than three million Australian women. Among the issues of primary concern to women, this consortium identified the issues of employment and work-family balance. (I should add that this consortium is not connected with the political party of the same name.)

Before the election of the Rudd Government, NFAW and What Women Want began campaigning and lobbying on the impact on women of Work Choices, particularly in combination with the Welfare to Work changes.

NFAW also joined the campaign for paid maternity and parental leave. Knowing that the women's movement was divided on the preferred model for paid maternity leave, NFAW extracted an election promise from Kevin Rudd to refer the issue to the Productivity Commission.

NFAW has always had a strong interest in child care and the way that women's role as parents as carers adversely affected their prospects and conditions of employment.

Since the election of the Rudd, like many other organisations operating on a shoestring, NFAW has been frantically trying to get submissions about women's interests into every relevant inquiry. I actually approve of the Rudd Government's approach to holding inquiries and consultations, because it does provide a chance for democratic input into Commonwealth policy making, but they have been coming so thick and fast it is very hard to keep up.

Submissions to inquiries this year have included:

Paid maternity leave

Sex discrimination

Pay equity

Outside School Hours care

Feminism

Feminism is now often regarded as a movement that has had its day, and some suggest that it has damaged women's lives. It is my view that feminism is needed today as much as ever. In particular women have a long way to go to get equality in the workforce and to have their child bearing role adequately provided for. Women need to have a real choice about whether and when to partner and to have children, without the current long term impact on their economic security. The diversity of women's choices and aspirations needs full recognition in law, in the workplace and in public policy. Women need to use their political power to achieve this, as men will not. And political strength comes from organisation.

Much of this comes down to money and financial security.

In the Nineteenth Century as the market economy developed, it was all about men. All the work that men did was given an economic value, while the work that women did was not. This included child bearing, raising and educating children, caring work and

household management. In most countries married women were not even allowed to own property in their own right.

Women did gain an increasing role in the market economy, particularly towards the end of the twentieth century. The percentage of women aged 20-59 in paid work has nearly doubled from 38% in the mid 1966 to 70 % of women in 2006. (I use these ages to remove some of the effects of later school leaving, the increase in age pension age and the growth in the proportion of the population aged 60 and over). Over that time the employment of men of that age range has fallen from 95% to 85%. Excluding the retired, around two-thirds of couples have both partners employed.

The Harvester case of 1907 established a different basic wage and hence a formal wage differential of 25% for men and women in the same job and this lasted until equal pay in 1972. While this was a major benchmark, we are still a long way from equal pay for work of equal value. The latest figures show a differential between men's and women's full-time ordinary time earnings of 16%.

The marriage bar, excluding married women from the Commonwealth Public Service was not lifted until 1966. Yet even in the late 1980s the then Minister for Finance, Senator Peter Walsh, could argue seriously against the extension of child care because it would enable married women to enter the labour force.

The work that was traditionally the role of women is still underpaid. Examples include nursing, teaching and child care. None of these activities could ever be seen as other than vital to life and social reproduction. All are highly skilled, yet all are still undervalued in financial terms, compared with men's skilled work. Women's employment is still concentrated in certain occupations and industries, and these are often related to these traditional roles.

In terms of industry, women predominate in health and community services (nursing and caring), in education (teaching) and in retail. In occupation they predominate among professionals, particularly health and education, among clerical, sales and service workers, and among labourers they account for the great majority of cleaners.

Women are less likely to be small business operators: In June 2006, 68% of small business operators were male and 32% were female. (Less likely to be owner managers: In August 2007, 23% of employed men were owner managers, compared to 13% of employed women.)

As you would know, women have not had the same bargaining power as men. There are many reasons for this. One is that women tend to be in jobs where the labour market is not tight and often in industries which are poorly funded or low profit, such as community services and small retail business. Women's work areas are less unionised than men's, though women are as keen as men to join unions where they are available. Another is that they are more likely to be employed in small to medium enterprises and therefore it's harder to organise collective action. Women's employment is more precarious. But more importantly are probably cultural factors – the longer standing labour force status of men, and gender role models which militate against aggressive bargaining action by women. In mixed gender areas of employment, they are less dominant than men in union structures.

Female employees are 55 per cent more likely to be reliant on awards than men – just under one in four women, compared to under one in six men, rely on awards

to set their pay and conditions. Those who have had access to enterprise bargaining have advanced their earnings as well as men. Those who have been on individual contracts and AWAs have fared much worse than men, widening the average hourly wage gap¹. Women have less access to overtime, and they are less likely to be able to negotiate favourable working conditions, particularly those that relate to women's needs such as family friendly working conditions. As David Peetz writes

The great gains for women have been made, and are made, through collective action. It is the people in the weakest positions in society who have the greatest to gain through exerting collective power, including collective action in the labour market.²

Women's child bearing role has not been adequately accommodated in relation to the workforce. Although maternity leave was introduced for the public sector in 1972 and for the private sector in 1979, Australia still does not have mandatory paid maternity leave. Thus in a society where two income families are now the norm and many women are the primary breadwinners in families, women who have babies are suddenly thrown back into the role of dependent spouses for the time they take off paid work.

In August 2007, ABS estimated that 45% of women employees were entitled to paid maternity leave in their main job. This comprised 60% of those working full-time female employees and 27% of those working part-time³. This does not mean that women actually having babies were the ones entitled to paid leave. Other estimates have put that at 30%⁴. The majority of women covered were in Government and education, with a high proportion also in health. Thus it is very largely public sector women. Paid maternity leave is usually at full wage replacement but very short in duration.

The role of caring for children as they grow and the household management that comes with that is still done predominantly by women. Currently this means that a large number of women, particularly those with dependent children seek part-time work to allow them to manage both roles. During the 1970s there was continuing resistance to the spread of part-time work: In the population aged 20-59: 11% of prime age women and 1% of men were in part-time work in 1970 and this has now grown to 30% of women and 4% of men. Apart from students, part-time work is very much a female phenomenon.

But part-time work is much more casualised and therefore lacks paid leave entitlements and other conditions of security. In August 2007, 4% of full-time workers were casual compared with 40% of part-time employees. This meant that 25% of all employed women lacked paid leave entitlements compared to 16% of all employed men⁵. It tends to be lower status, often off line sorts of work and often with

¹ Peetz

² Peetz p3

³ ABS, Australian Labour Market Statistics, Cat no 6105.0, Jul 2008, Table 4

⁴ Baird etc

⁵ ABS, Australian Labour Market Statistics, Cat no 6105.0, Jul 2008, p42

very poor prospects of career progression. Whether this is the result of it being non-traditional, or because it is done by women is not clear.

The other great barrier to employment by women with children is the lack of child care, its non-affordability and concerns about the quality.

The end results of these life course financial penalties is shown among women at the end of their working life, aged 55-64. Although these figures are a bit old, just over half of women aged 55-64 in 2002 had superannuation, compared with just over two thirds of men, and of those who did have it, the average amount was around half of men's. On the other side of the coin, women of working age were more likely than men to be fully or partly reliant on income support and on the age pension. The age pension figures however should be treated with caution, because there are many more women than men of age pension age.

Policy directions

So what is to be done?

Under the Workchoices program of the Howard Government women were particularly disadvantaged.

The pressure to move to AWAs and the removal of the 'no disadvantage test' meant that women were no longer able to rely on the protection of awards. Those employees with collective enterprise agreements tended to have more bargaining power and capacity to resist the erosion of their wages and conditions. Women with no bargaining power or collective backing were more likely than men to be forced onto the minimum wage and conditions set by the Fair Pay Commission. Women who wished to bargain for paid maternity leave or family friendly conditions were put in a position of trading off other rights.

The lack of the right to be represented by a union in bargaining and the lack of access by unions to workplaces made it harder for women threatened by inadequate pay and conditions to seek such help.

The third effect on women was the curtailing of the independent industrial tribunals. These had been among the principal mechanisms in the move towards gender equity. One major vehicle for advancing towards gender equity was national test cases, covering areas such as maternity and paternity leave, family and carer's leave, and unreasonable hours. Test cases are now impossible. The test case that established employees' "right for request" certain family-friendly terms, was unable to be properly implemented before WorkChoices took effect.

The Equal Pay decisions of the 1970s, the award restructuring processes of the late 1980s and early 1990s, the equal remuneration claims arising from the Brereton legislation, and most recently, the pay equity cases held in state tribunals, were all steps towards the goal of equal pay. There was still much to be done towards pay equity in terms of valuing women's work, recognising qualifications and overcoming the disadvantages in career structures. But the removal of industrial powers of the States over private sector corporations meant that good work done in States such as Queensland and New South Wales, setting benchmarks for other States to follow, and which would have progressed further was stymied. These powers were moved to the Fair Pay Commission which had

no obligations, capacities or interest in these issues.

The outlawing of pattern bargaining meant that women scattered across small and medium enterprises could not take collective action, in the way that employees of larger enterprises could.

Under Workchoices, discrimination and harassment against women were less effectively protected. While these are still illegal under the Sex Discrimination Act and other State Acts and the IR legislation, the onus on the victim to take action and prove the case, the difficulties of negotiating a settlement through the Human Rights and Equal Opportunities Commission, and the cost and intimidation of taking legal action in the Federal Courts mean that sanctions are weak. Where once the union could provide assistance to deal with such cases in the workplace, this was made almost impossible. The power of small and medium enterprises to unfairly dismiss employees meant that complainants could readily be dismissed, as long as no illegal reason was given overtly.

The power of employers to impose harsh wages and conditions, the lack of protection against unfair dismissal and the lack of access to unions set up a workplace culture where employers were perceived, and perceived themselves, to have more power than the legislation actually gave them. Many employees lacked knowledge of the residual rights they had and how to enforce them.

Finally the Welfare to Work changes affected parents (particularly sole parents) of school aged children who had previously had at least the option of remaining on the pension. Under the new regime if a sole parent was offered a job on an AWA that had no penalty rates, no overtime pay, no meal breaks, no shift allowances, no leave loading, no redundancy pay and only paid the minimum wage, and she knocked it back, she was breached and without income for eight weeks.

It was a great triumph of the resistance movement Your Rights at Work, in concert with various other causes, that saw the end of the Howard Government.

The Rudd Government began its attack on WorkChoices earlier this year with the first stage of Forward With Fairness. But it is aiming at a new system that does not entirely undo the WorkChoices arrangements. It has banned new AWAs, replacing them with Individual Transitional Employment Agreements which were subject to a 'no-disadvantage test' against applicable awards or collective agreements. And allowing the continuation of collective agreements.

The award modernisation process is to be done by the AIRC based on 10 National Employment Standards that can be included in awards, and the Minister has power to include others. These are more beneficial for women in particular than the 5 standards under Work Choices.

The Fair Pay Commission will keep the role of conducting annual wage reviews. A new independent agency, Fair Work Australia, has been established to deal with workplace relations services, advice and compliance.

It seems unwieldy to have these three agencies operating at once. The ALPs policy at the election was that Fair Work Australia would perform all these functions.

It is not at this point clear what the next stage in the government IR policy will be. The prospects for women are very much dependent on various issues that have yet to be decided.

The platform stated that unfair dismissal would be outlawed for all workers, but the process would be simpler, faster and less costly. We have yet to see in detail what that means.

Issues on which the Government has not signalled action are the right of entry by unions and the right to union representation.

Allowing pattern bargaining would be prevent employees of small to medium enterprises from falling further behind collective agreement standards among large employers

There is a need to address the conditions of casual employees and to break the nexus between part-time work and casualisation

What will be the system for adjusting awards in relation to productivity and living standards? Without a process for regular adjustment, those reliant on awards will fall further behind those with the industrial power to negotiate above award conditions through collective bargains

Will the power to advance employees rights through emerging issues become totally in the hands of executive Government rather than in the hands of the independent judicial system such as the AIRC

How will pay equity be addressed? A Government agency such as EOWA can monitor and advise, and give glittering prizes to good employers but has no teeth so long as it is divorced from the formal processes of adjustment of wages and conditions. There needs to be monitoring, creative policy making on how to value work and compensate women for their gender diadvantages and the power to put new systems into effect.

What package of family friendly standards is ideal? Are the existing standards sufficient to accommodate workers with family responsibilities fairly?

Finally, who will adjudicate disputes where the employer and employees are unable to reach a satisfactory agreement? This is not clear in the role of the AIRC nor Fair Work Australia.

Paid Maternity Leave

As I mentioned earlier the issue of Paid Maternity and Parental Leave is on the agenda with the referral to the Commonwealth Productivity Commission.

I probably don't need to argue the case with you about the social and economic benefits of children and child raising. Or why women need to be compensated for their role in child bearing, through income protection for an adequate period to prepare for and recover from the birth, breastfeed and care for babies until it is

feasible to use substitute care. Nor the benefits to babies in health, emotional, social and cognitive wellbeing of parental care and the lifelong benefits of such a start to life. Nor about the families who cannot afford to have the children they want or have to return to work too early to keep a roof over their heads and food on the table.

You are probably aware of the debates around paternal care – whether that should be available, on a use it or lose it basis, or interchangeable with maternity pay.

There are three current proposed models for providing it

The model proposed under the Howard Government by HREOC, The Australian Democrats, Sharon Burrow and Heather Ridout, and still favoured by many employer groups. Under this model the Commonwealth would pay fully for it and would provide the minimum wage for 14 weeks. This is essentially an increase of \$1732 to the current \$5000 baby bonus. In my view 14 weeks is inadequate and the minimum wage is inadequate in comparison with other levels of paid leave.

The second model is to enshrine paid maternity leave as an employment standard. This runs the very real danger of increasing the discrimination against the employment of women. It would particularly affect small businesses which are unable to average the cost across a large workforce. It would also add to the relative labour costs of industries and employers that employ higher proportions of women, militating against gender pay equity.

Sharan Burrow and a number of others are arguing for a combination of these two strategies.

The third is a mandatory insurance system, with some level of government contribution, either the current baby bonus or more, and mandatory contributions by employers and possibly by employees as a percentage of total wages. This is the model that I originated and which has been backed by NFAW and by unions NSW among others. While there are variations in the details, this model argues for at least 6 months at full pay, plus 4 weeks paternal leave and often a payment to the employer as well.

An analysis of submissions to the Productivity Commission showed that 54% favoured 26 weeks of more. 27% favoured the minimum wage and 58 per cent favoured full wage replacement. 43% argued for a fully government funded scheme, 17% for Government and direct employer and 22 per cent for government and levy.

The Commission will report later this month with options, there will be another round of consultation and submissions and a final report in February.

Conclusion

There is still much to do in the long march towards gender equity in the workplace. It is obvious that women are very diverse in their aspirations around work and family life and policy among women's organisations and government needs to allow for this diversity.

But women will not have real choices until their working conditions and options are greatly improved.

While the old system which expected that moneyless women could rely on the protection of a male breadwinner while they cared for their domestic role has largely broken down, the later ideal of men and women being financially equal and independent has not delivered. In between those two models, parenthood and children have been squashed as work roles grind against private roles.

I have touched on some of the areas that need to be involved in resolving these issues but have not been able to address the potential for improvements to the anti-discrimination system, for child care, and the role of the social security system, all of which are part of the policy mosaic needed for a fairer deal for women.