



Women's Electoral Lobby Australia Inc.

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Comments: National Employment Standards Exposure Draft Discussion Paper

Women's Electoral Lobby

and

National Pay Equity Coalition

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The **Women's Electoral Lobby** and the **National Pay Equity Coalition** have long been involved in the pursuit of improving the working conditions and living standards of Australian women. We have contributed to policy making and debate in parliamentary inquiries, industrial tribunals and Living Wage Cases held before the Australian Industrial Relations Commission and the Australian Fair Pay Commission.

Our organisations acknowledge that the new National Employment Standard provides a wider set of entitlements on a national basis than has previously been allowed for in the Federal industrial system.

We welcome the end to WorkChoices and acknowledge that the major legislation introducing the proposed Fair Work Australia has not been presented for public discussion at this stage. We therefore make our comments on the proposed NES system on the basis of further consultation and review of the Fair Work Australia when the details of the new system take form.

We are however pleased that the setting of minimum wage rates and classification structures will be returned to modern awards and come under the jurisdiction of the new independent body removing the setting of wages from the secretive process currently undertaken by the Fair Pay Commission.

We also note that the review and development of new modern awards provides the new Commission with the opportunity to undertake work value assessments free from gendered notions of work value and skill which had in the past resulted in the historic undervaluation of women's work.

Our comments on the NES are as follows:

Review process

While review procedures are addressed in the award modernization process and proposals for adjustment of minimum wages rates, there appears to be no such provision for review of the NES. We would recommend a mechanism be specifically for a formal review process of the NES.

Compliance and remedies

The Draft Exposure paper does not set out a compliance regime and mentions that these will be dealt with in the Government's substantive reforms.

We stress the importance of a compliance and enforcement. Workers must be aware of their rights and entitlements and be able to effectively and inexpensively exercise these rights.

We recommend a clear, accessible process and further consultation in the development of this process.

Requests for Flexible Working Arrangements

We are pleased with the Government's objective to assist working families to balance work and family responsibilities and recommend extending the provisions set down in the Family Leave Provisions Test Case, decided in the Australian Industrial Relations Commission in 2005, to wider forms of flexible work arrangements and eligibility to all employees with children under school age.

However we note the following problems and make recommendations that will provide more certainty and fairness into this new standard:

- We note that what might be considered reasonable business grounds for refusal is not defined.
- We suggest that this be remedied as it will bring about confusion and uncertainty and may also render the provision ineffective.
- The employer obligation to supply a written response within 21 days does not include an appeal mechanism so this should be specified.
- Otherwise this uncertainty and lack of formal grievance procedure leaves the provisions unknowable and unenforceable and as AWAS have shown that few

employees, particularly women, will be able to successfully negotiate on an equal basis access to this implied entitlement.

We would encourage the Government to consider whether this right to seek flexible working arrangements should be extended to all carers rather than be confined to employees with children under school age.

A casual employee employed on a regular and systematic basis should also be able to access this right.

We recommend an inexpensive and accessible grievance procedures be specified to set standards and ensure that refusals are legitimate and reasonable.

We also recommend that in drafting the Right to Return to Work provisions that the drafters consider the Victorian Government's amendments to Equal Opportunity Act 1995. These came into effect in September 2008 and extend the range of what could constitutes discrimination against parents and carer's in employment matters as well as more clearly articulating what is reasonable in considering the accommodation of right to return to work.

Parental Leave:

We note that the Discussion Paper does not deal with the rights and entitlements of same sex couples. We see this overt discrimination as an anachronism in modern society. More same sex couples have children and their parental rights are already recognised in many jurisdictions so need to be adopted in this one.

We recommend that these Rights must apply to all workers.

We find the NES proposal that male employees must start parental leave on the date of the birth of the child is too inflexible.

We recommend a more flexible time frame which would enable employers and employees to make suitable arrangements within a limited time frame is predictability is desired.

We note with disappointment that the AIRC Family Test Case provision of 8 weeks concurrent parental leave is reduced to 3 weeks in the proposed NES.

We recommend that 8 weeks concurrent parental leave be considered.

Public Holidays

We note that the NES protects public holiday and a workers' choice to work or not work on such days. We are however concerned that it is unclear whether penalty rates will apply to wages earned on public holidays. As these holidays are likely to present problems for parents as children are not in forms of care, we consider that penalty rates should be maintained for those who give up their time when others do not.

It is possible that those who are left to work on public holidays will resent those who do not and create tension in workplaces.

We recommend that penalty rates be set down in modern awards and be protected in NES.

Notice of termination and redundancy pay:

We agree that access to termination and redundancy pay provides a safety net for workers in the loss of their employment. We are somewhat confounded however that these provisions are denied to workers employed in workplace which employ less than 15 workers. As these include many women we are concerned.

It is difficult to imagine that workers who lose their jobs in small workplaces do not face the same financial difficulties when losing their jobs. We do however note that small business employers may face financial difficulties. We suggest that a table of

entitlements for small business employees be developed similar to that contained to many awards. This would acknowledge problems associated with small business but also give protection to employees. It would also ensure give effective to a safety net which is enjoyed by all workers.

Information Statement:

We note that consultations with women conducted on behalf of the National Foundation for Women (NFW) found that many women, especially young women and women with limited English language skills, had little or no idea of the basis on which they were employed/paid or understanding as to their actual minimum legal entitlements. The NFW report called strongly for a legal requirement for an employer to provide an employee with a clear statement of their employment entitlements when they are appointed, and spell out clearly the payments made in employee pay slips.

We therefore welcome the Government's intention of requiring employers to give each new employee the Fair Work Information Statement as soon as practicable after they commence employment. We would ask the Government to ensure employees also have easy access to the new model awards applying to their workplace once these have been settled.

We are pleased that the Government has provided an opportunity for discussion and comment on the National Employment Standard and look forward to consultations as the process of further development of these Standards occur.

