

Ron McCallum Debate

Draft Transcript

AIER Ron McCallum Debate 2023

Voices and Work

– reform, challenge, diversity and the universal fair go. Where are we in 2023? The AIER explores the ability of diverse voices to have their say and to be heard in the rapidly changing world of work.

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James Fleming, AIER ([00:07:58](#)):

Good evening everyone and welcome to the 13th annual Ron McCallum Debate on industrial relations. I'm James Fleming. I'm the executive director of the Australian Institute in Employment Rights, the AIER. And I'd like to begin by acknowledging the traditional custodians of the land and to pay my respects to their elders past, present and emerging. So here at the AR, we aim to promote better industrial relations in the public interest and we're inspired by the tripartite structure of the International Labor Organization. We aim to encourage better ways of working through promoting fundamental labor standards and social dialogue between unions, business and government. We try to promote new and bold ideas for debate and IR reform. So like last year, tonight's debate is in front of a live audience at the Wesley Conference Center in Sydney, and it's also being webcast to around 500 people online. So welcome everybody in the room and also to those tuning in online.

([00:08:53](#)):

A big thanks to our esteemed debate participants that you're going to hear from shortly in our keynote speakers and to our main sponsors tonight, Hamer's Workplace Lawyers. As you know, tonight's debate topic is voices and work reform challenge diversity and the universal Fair Go. Where are we in 2023? We explore the ability of diverse voices to have their say and to be heard in the rapidly changing world of work. So why are the voices of different groups in the workplace important and what is to be done to support them from indigenous voice migrant and minority voices to women's voices? Tonight you're going to hear from a wide range of people discussing everything from neurodiversity, sex discrimination and sexual harassment to freedom of association gig workers and universal standards. And this debate about voice will undoubtedly involve questions of diversity, inclusion, equality, rights, and representation. So those are all things that are close to our hearts here at the AIER and something we explore in our argument for a new, more inclusive industrial relations system.

([00:09:55](#)):

In this book that I'd like to show you a new work relations architecture. So the book argues for a more universalist and at the same time devolved and future-proof system that remedies the current labor market segregation. It's full of ideas about how to ensure a fair go and basic security for all, and if you're here in the room, you'll get a complimentary copy from us and for everybody who's registered, we're going to email out an ebook version. If you like the look of the book, please consider buying a copy for a friend for Christmas so you can help support the work that we do and you can do that from our website, our online bookshop. Tonight we're also launching a new journal,

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the Journal of Work and Ideas, which is now live on our website. It launches with an article from Professor Joel and Riley Munton and Keith Harvey called Compensating Work Injuries for Precarious Workers and Historical Perspective.

[\(00:10:51\)](#):

And this article draws really fascinating parallels between the historical case of so-called distributors and pickup workers in the early 20th century and the gig workers of today. So turning to the debates, tonight's debate is named in honor of emeritus Professor Ron McCallum and his life's work promoting justice at work. Ron is here tonight and will give a keynote speech as well as his customary reflections on the debate at the end. He's been the a's patron for many years and is one of Australia's most well-regarded law experts and one of the world's leading disability advocates. He's a past chair of the United Nations Committee on the Rights of Persons with Disabilities and he is also the first totally blind person to have been appointed to a full professorship in any field at any university in Australia or New Zealand. He's a former professor and dean of law at Sydney University and he was Australian of the year in 2011.

[\(00:11:42\)](#):

So all speakers tonight are going to speak for five minutes. We've got four keynote speakers before the debate proper and then each of the debaters are also going to give a five minute speech talking to the theme before we get into the debate in earnest, the first of our keynote speakers is John OT from the International Labor Organization and he's joining us from Geneva. John's been with the ILO since 1999 and he currently works as a senior specialist in labor relations and collective bargaining. Prior to this role, he worked in the ILOs decent work team in Bangkok with responsibility for various countries in Southeast Asia and South Pacific. After John, you're going to hear from the Minister for Employment and Work Relations and Minister for the Arts, the honorable Tony Burke and then the Shadow Minister, the Honorable Senator Michaela Cash, and both of them are talking about the closing the loopholes bill currently before parliament. Then we'll hear from Ron and he's going to hand over to President Hatcher of the Fair Work Commission who's our moderator of the debate tonight, and President Hatcher needs no further introduction. Please note the proceedings is being recorded and we'll be uploaded online afterwards. So now I'd like to go ahead without further ado and welcome John Ott from the ILO. Over to you John.

John Ritchotte, ILO [\(00:12:58\)](#):

Thank you James. The Honorable Tony Burke, the Honorable Senator Malia Cash. Dear participants, good evening. We'd like to thank the Australian Institute for Employment Rights for inviting the ILO to address this important gathering. My remarks will touch upon a few current trends and then highlight a few important initiatives. Coming out from the ILO starting with our ILO constituents, we are looking at membership in both employers, organizations and trade unions. Over the last 10 to 15 years, membership in employers organizations appears to be relatively stable. Trade union membership has increased globally by 3.6% according to our estimates over the last 10 years. However, this increase is entirely attributed to self-employed and own account workers joining or forming trade unions. The membership of wage and salaried employees has stagnated or has not kept pace with the growth of employment. Both unions and employers organizations however, are actively seeking to reach workers and employers who are typically difficult to organize in order to allow them voice and representation.

[\(00:14:34\)](#):

So this is quite an important trend to keep an eye on and in line with the topics of tonight's debate. Another important global trend of course in the labor market has been the recent spike of inflation. We have seen national

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responses in particular through rapid increases in minimum wages in a number of countries as well as employers and workers attempting to address this issue directly through collective bargaining. However, in many cases, real wages are still below pre covid levels. I had also like to note the growing interest around collective bargaining in many countries and regions around the world. We see this reflected in a number of political declarations such as the G seven Labor and employment ministers meeting in April, 2023 and the G 20 ministers meeting in July, 2023, both of which gave strong support to promoting collective bargaining. A new European directive calls for action plans to promote collective bargaining in countries where the collective bargaining coverage falls below 80%. It's just quite significant. One important area of work for us for the ILO is to promote bargaining that is more inclusive and that covers workers and employers who normally, who typically fall outside of these processes. These include, for example, workers and employers in the informal economy, domestic workers and migrant workers.

[\(00:16:22\)](#):

Turning to some ILO developments, the ILO Director General has established a global coalition on social justice with a view to highlight the iOS mandate and agenda to promote decent work throughout the multilateral system. The coalition aims to increase multilateral cooperation and partnerships in order to pursue the overarching objective of advancing social justice and decent work for everyone. It will build on the iOS experience of over 100 years in mobilizing partisanism and promoting social dialogue as an effective means to advance social justice. It will also play a key role in galvanizing support for the recognition of social justice in the multilateral agenda. In particular at the UN Summit of the future in 2024 and the proposed UN World Social Summit in 2025.

[\(00:17:22\)](#):

The ILO has also been seized with a few topics that are responding to current and emerging issues. The governing body I the ILO decided to place on the agenda of the International Labor Conference in 2025, a discussion on an international labor standard on decent work in the platform economy. This marks the first ever effort to develop a global regulation on platform work. One of the first steps in the process of developing a new standard is to produce an initial law and practice report and a questionnaire which will be sent to all governments this year. This subject will be discussed at the conference in 2025 and in 2026 and may result in a new convention, a new recommendation or both. There has also been a rapid change among certain IO constituents with regard to the topic of living wage. As a result, there will be a tripartite meeting of experts on this subject in February, 2024.

[\(00:18:32\)](#):

Finally, you may be aware that there has been a difficult discussion within the ILO since 2012 concerning the right to strike and whether ILO convention 87 on Freedom of Association and the right to organize can be interpreted by the ILO supervisory bodies to include right to strike at the most recent governing body that ended last week, two special sessions were devoted to discussing this topic. The governing body agreed to ask the director General to send the question as a matter of urgency to the International Court of Justice for an advisory opinion as provided for under the ILO constitution. This marks the first time in over 70 years that this particular constitutional clause has been invoked with those introductory remarks. Chair, I thank you for the opportunity to address this debate and turn it back to you. Thank you.

James Fleming, AIER ([00:19:36](#)):

Now we'll hear from the honorable Tony Burke.

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Tony Burke, MP ([00:19:44](#)):

Good day. It's Tony Burke. One of the great honors of being in this portfolio, whether you're in government or opposition, is being able to contribute to the Ron McCallum debate. I'm really sorry I can't be there in person, but I wanted to offer a few reflections both in terms of where we're at last year with this same debate and what lies ahead with the bill that's currently before the parliament because the fear campaign, it's not going to be that different to what happened last year. Now let's have a think about last year with a secure jobs better pay bill. When I put that forward, I explained in this debate from memory as well the importance of getting wages moving, what we were trying to do, whether it was improving bargaining, whether it was improving job security, whether it was improving gender equality and the different priorities that we had there.

([00:20:35](#)):

In response, we were told a few things. We were told the bill would lead to coast to coast strikes, mass industrial action, we were told it would lead to fewer jobs and we were told it wouldn't help with wages. So 12 months later, what are the results? Industrial actions down wages are up and employment is up in the greatest period of jobs growth for any first term government, first year of a first term government in history, not bad results and a long way from the Fear campaign that happened last year. So this time the bill doesn't hit the whole economy in the way that last year's bill did. In different ways, this year's bill only deals with particular loopholes and most employers, let's face it, don't use any of them. Most employers don't engage in wage theft. Most employers, if somebody can easily be converted from a casual to a permit and they want to, most employers facilitate that.

([00:21:38](#)):

Most employers pay people through a normal employment model or respect minimum standards and most employers if they do have an enterprise agreement, so we're already the subset, but for those employers that do have an enterprise agreement, by and large, most of them just honor it and don't go off using a labor hire loophole to try to undercut it. So most employers don't access any of the loopholes that we're talking about, but you wouldn't know that if you had a look at the fear campaign that's out there at the moment. The Fear campaign about closing loopholes has been quite bizarre and there's been stuff there about the gig economy that presumes that the legislation would turn people into employees in every employee entitlement when explicitly the legislation does not do that. You've had in the Senate inquiry on the bill some extraordinary, I find this exciting.

([00:22:35](#)):

Not everyone finds Senate inquiry is exciting, but if you look at some of the evidence that have been given from some of the companies to complain about the labor hire loophole being closed, one of them for example, went really hard on what a disaster it would be for their business and then was asked the question, do you have an enterprise agreement? The answer was no. And at that point they had to acknowledge, well, it wouldn't affect them at all, but maybe one day in the future if they wanted to change their business model. There are a lot of silly things being said. If we want to get wages moving, we can't have a situation where some employers lawyer up find a way to evade the legal protections that all their competitors are abiding by and somehow allow that to be the norm. For some businesses, it's not fair to their competitors, it's not fair to the workers who miss out as a result.

([00:23:33](#)):

So we need to be able to close those loopholes effectively. The argument against this bill, which no one seems to want to make, is to defend the loopholes. If some people think it's fair enough that wage theft is not a crime, they should argue that if some people think that there should be a whole lot of low income workers who have no

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minimum standards at all, they should argue that if someone thinks that, whether that you should be able to be paid as a casual, even though you don't want to be a casual, you want the security of a permanent job and everything in the way that you're being rostered reflects as though it were a permanent job, but you shouldn't have the right to transfer if people think that they should argue that. And similarly, if someone thinks that an enterprise agreement once agreed to should be able to be immediately undercut by changing who technically the employer is, whether it's a labor hire company or whether it's a shelf company within the same corporate group, they should argue that, but no one will.

[\(00:24:30\)](#):

No one will in fact defend the loopholes and I reckon that really says it all. They're not defensible. And so that's why I'm arguing that as soon as the parliament can, we need to shut down these loopholes. I have no doubt what will happen next. Some people will lawyer up and they'll try to find the next one, but as parliaments, we've always dealt with loopholes in other areas of policy. If there's a tax loophole that's hitting government revenue, not a worker's income, but hitting government income, doesn't matter who's in government, the legislation comes into the parliament to shut down the tax loophole. When there's a loophole that undercuts job security or wages for a worker, parliament's particularly over the last 10 years have tended to just let it slide. Well, I don't think that's fair and this government doesn't think that's fair. And if you think about it, given nobody is willing to defend the loopholes, I reckon they know it's not fair as well.

[\(00:25:35\)](#):

We're in an argument right now that is really at its core, should we continue to get wages moving or not? And I think the answer to that's pretty obvious. We had a government previously where low wage growth was a deliberate design feature over how they ran the economy. Workers in Australia are at a distinct disadvantage as a result of that, and we've seen what happened with the wages share versus the profit share of the economy over the last decade. To get wages moving and to improve job security for people, you need to do two things. You need to change the architecture to give people a better base from which they're negotiating and better negotiating rules. And we did that last year. And the second thing you need to do is to shut down the loopholes which undercut the principles that apply to every other workplace, and that's what we're trying to do now. And if anyone thinks we shouldn't, I just say let 'em argue that because if they had the confidence in the integrity of the argument, they would, but I reckon in this debate you'll find no one does.

James Fleming, AIER [\(00:26:43\)](#):

Now you're going to hear from the Honorable Senator Michaelia Cash.

Senator Michaelia Cash [\(00:26:50\)](#):

Ladies and gentlemen, I'm delighted to provide this keynote address to the Ron McCallum debate for 2023. I would like to acknowledge the president of the Fair Work Commission Justice Adam Hatcher. I would also like to wish the participants in tonight's debate all the very best. The workplace landscape in Australia has undergone significant transformations in recent years driven by technological, economic and social factors. One of the most notable shifts in Australian workplaces has been the rapid advancement of digital technology and automation. This has been accompanied by the continued growth of the gig economy in Australia with many workers now opting for non-traditional short term and freelance employment, providing them with a high level of flexibility but also posing challenges. In the industrial relations system, the COVID 19 pandemic accelerated the adoption of remote work and

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many companies have now embraced hybrid work models. This shift has blurred the lines between work and personal life, necessitating new discussions around work hours over time, and employee wellbeing.

[\(00:28:14\)](#):

Australia, like many developed countries, is also experiencing an aging workforce. As older employees delay retirement and continue working, there is a need for industrial relations policies to accommodate the change in demographics. This includes addressing age discrimination, flexible retirement options, and upskilling opportunities for older workers. These are just some of the examples of how our work environment has changed in recent years. Obviously there are many more, but what this rapidly changing environment means is that our industrial relations system must adapt and evolve to address these unique challenges and opportunities. What is clearly apparent however, is that the Albanese government embarking on these challenges and opportunities is reverting to their old playbook. I believe the so-called closing loopholes Bill will make life tougher for Australian businesses by increasing costs, complexity and confusion and as businesses have told us, will likely lead to job losses. The big problem is the government is not listening to the employers of this nation.

[\(00:29:38\)](#):

They're the job creators of this country and they are united against this bill. Employers want the government to go back to the drawing board, listen to them and re-look at most aspects of this bill. Let me now take you through some of the key issues the coalition has with this bill. I want to start with casual employment because the more we hear from businesses and employers all over the country, the more it has become apparent that if this legislation is passed despite any potential last minute amendments, employing a casual will be complicated, confusing, and complex. If the proposed definition of casual employment is introduced, employers have said that they are likely to move away from casual employment altogether. The new definition is three pages long. It includes 15 factors to determine if an employee is a casual. The 15 factors and I quote must all be considered but do not necessarily need to be satisfied.

[\(00:30:55\)](#):

An employee will be a casual only if they meet these factors. If not, then the business is breaking the law if they tell the employee that they are casual, even if the employee wants to be a casual. For many prospective employees, casual employment is the preferred means of engagement and it provides the flexibility and responsiveness they are seeking. This bill will only make it more difficult for employers to employ casuals. The same job, same pay measures I believe are an unjustified attack on labor hire employers as well as the businesses and workers that depend upon the sector. Labor's policy goes much further than they claim despite what the government says. The legislation will also cover service contractors who are engaged to provide a service, often utilizing their own plant and equipment, their own expertise and their own management as well as their own workforce. This part of the bill also has open-ended and unworkable concepts of the same job and the same pay that do not compare like with like and would be as businesses have told us impossible to comply with.

[\(00:32:25\)](#):

In practice, the bill also attacks the gig economy. The Fair Work Commission will have expanded powers to set work rules for gig workers and independent contractors if they are assessed to be gig workers or employee like in their working arrangements. Businesses have said this will effectively impose industrial awards on gig work and contracting, such as imposing minimum shifts, reducing the flexibility and choice for workers. As an example, they may be required to do a three hour minimum shift and therefore only be able to work for one platform at a time. The

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end result, Australians will pay more and lose the convenience of gig economy services. Basically, people will not get the services when they want them and for workers they will lose the flexibility and the rewards of working in the gig economy. Now the one thing that the bill doesn't deal with is productivity.

[\(00:33:40\)](#):

Industrial relations reform is without a doubt one of the most important of all the economic reforms required to make Australia more productive and competitive. The focus of any industrial relations reforms should be to make us more productive and to create more higher paying jobs. The link with productivity is the key. The more productive we are, the more Australians can be sustainably compensated. That is what will bring prosperity to our country and that is what we want as a coalition and we will focus on as we formulate our policies for the next election. Enterprise bargaining should be the cornerstone of our workplace relations system if we are to grow pay packets, improve job security, bolster the flexibility that employees demand and boost productivity. Australia needs a modern workplace relations system that delivers a safety net for workers, recognizes the shared interests of managers and workers in an enterprise's success, and gives all enterprises the agility they need to compete and succeed. Any changes must be designed to improve productivity, grow wages, and enhance competition. These are the ingredients of a successful economy. Ladies and gentlemen, I wish you all the very best and thank you for your time today.

James Fleming, AIER [\(00:35:29\)](#):

I'd now like to hand over to emeritus Professor Ron McCallum. The floor is yours, Ron.

Emeritus Professor Ron McCallum [\(00:35:33\)](#):

Thank you, James. Good evening. All. The central theme of this evening's debate is diversity of voices at work that is voices at work and diversity of the workforce. One group can't even get to the workplace, let alone have their voices heard and this group are we persons with disabilities? We are at the bottom of the heap. If I may, given that the debate is sort of named after me be a little autobiographical for a few moments. Can I take you back? 70 years, 1953, the ending of the Korean War on all sorts of Marilyn Monroe coming to her own. I started school. My school was segregated. It wasn't even called a school. It was the Royal Victorian Institute for the Blind. It was an institution run by charity with a good level of no blessed oblig and I learned braille and did all the things that small children did.

[\(00:36:54\)](#):

Some of my classmates because of our medical issues, had cognitive disabilities, so it wasn't unusual for me to be in classes with people with different levels of disability. Can I take you to the playground? Do you remember school playgrounds? Well, mine had sort of grass and sort of asphalt for bouncing balls and there was this wire fence and across the wire fence was the factory. We all knew about the factory because we heard the hooter when they stopped work, it was for blind people. It was a sheltered workshop, what we call Australian disability enterprises. And because blind people couldn't get jobs, there was no technology as there is today. They were involved in making baskets before the ubiquitous plastic bags. It was a measure of goodness for a housewife or house husband to carry the shopping in a basket made by the blind or to lay the child in a bassinet made by the blind.

[\(00:38:03\)](#):

Well, that's many of my friends ended up in these workshops and I played sport with them as a teenager and saw that they were leading very limited lives and that it could have been me. 70 years have gone by and we have seen super increases in technology. I can now use a computer with synthetic speech. My friends with ambulatory

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difficulties have extraordinary electronic wheelchairs. My deaf sisters and brothers use oslan and special hearing aids. There has been an improvement, but not for the last 30 years. In 1993, Australian Bureau of Statistics showed us that the labor force participation rate that is those between 15 and 64 of persons with disabilities was 53% for persons without disabilities. It was 84%. Let's go to 2003, still 53%. Let's go to 2013, still 53%. I don't have 2023, but 2022, can you guess the number? 53%. Even though technologies have increased and there are huge challenges, what's the problem? In 2011, a report was issued by the productivity commission saying, let's have the NDIS because we'll increase productivity because so many people with disabilities will get into the workforce. NDIS is great, but the move to the workforce never happened.

[\(00:39:50\)](#):

I've worked recently on the Disability Royal Commission as a senior advisor, their recommendations on employment for we people with disability rather mild, let the public sector do some work. Let's hope that the private sector will come to the party and let's see what we can do about sheltered workshops. Australian disability enterprises, which since the NDIS have increased now what we need are more persons with disabilities in the workplace and we need to get employers and workers interested in this. The Royal Commission also recommended amendments to the Disability Discrimination Act, and I with others worked on those, I don't think they'll do much. Good amendments are better than nothing, but I think, and I only speaking here in the disability space, that individual complaints based mechanisms rarely make huge differences. What we want are for more employers and governments to employ we persons with disabilities flexible working, remote working should allow this and we then need people with disabilities to be in areas of work where there can be a change in finishing up.

[\(00:41:15\)](#):

People often ask me, well Ron, what do you think are the important things in your life besides marrying the children? Was it chairing a United Nations committee? Was it being senior Australian of the year? Was it running a series of federal and state inquiries on labor relations? And the answer is no. The most important thing I ever did was to teach law students in Victoria and New South Wales for 51 years. I think that when they spent a semester or a year in my classroom, many of them never thought the same about disability. So what we want are more of my sisters and brothers in employment so that we can all socialize and be together so that we can not only have diversity in the workplace, but so we can have a voice at work. Thank you. Now it's my great joy to hand over to President Adam Hatcher who is going to moderate the debate and I must say he's very kind to do it and he follows on from former President Ian Ross and former president Jeff Cher. I think between the three of them they've done all of the McCallum debates, so thank you President.

President Hatcher, FWC [\(00:42:34\)](#):

Thank you, Ron. Good evening everyone. The notion of a fair go or a fair go all round has been embedded in Australian workplace relations since federation in the high court work choices case justice Michael Kirby in his dissenting judgment said that the procedure envisage for the resolution of industrial disputes in section 51 35 of the Constitution was aimed at shaping the political economy according to the national ethos of the fair go. However, the original concept of the Fargo was shaped by the social and cultural norms at the time of federation in his famous but much misunderstood 1964 book, the Lucky Country, Donald Horne observed that the uniquely Australian benevolence implied by the Fargo was not extended to Aboriginal and Torres Strait Islander peoples nor do outsiders who failed to conform to dominant cul and cultural norms. The challenge of reinventing the concept of the fair go for today's diverse Australian society and workforce remains with us.

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[\(00:43:43\):](#)

How do we ensure a fair go and a voice in the workplace for women, for the disabled, for immigrants from different cultures, for the LGPD community, for the Neurodiverse and for indigenous Australians? And what should that fair go look like? Well, hopefully we're going to hear all the answers tonight and we have a fantastic and diverse panel of participants to help us work out these difficult questions. So I'm going to introduce the speakers at the outset. I'll give brief bios, but I have to say these won't do justice to the breadth of achievement of our speakers tonight. Now the first, who was to be the first speaker, but he's still on his way so he'll probably be the last speaker, is Liam O'Brien, the assistant Secretary of the Australian Council of Trade Unions. He's held that position since 2018 and before that he was the Victorian assistant secretary and national Vice President of the AWU where he started as an organizer in 2003 as ACTU Assistant Secretary, Liam's responsible for leading the movement's policy, industrial and campaigning, work on work health and safety and workers' compensation.

[\(00:44:56\):](#)

He's passionate about safe workplaces and he's a member of Safe Work Australia, the Asbestos Safety and Eradication Council and Jobs and Skills Australia Consultative Forum. Then we have Nicola Street who despite illness difficulties has remained steadfast in attending tonight, albeit remotely. So Nicola is the director workplace relations policy, diversity equity inclusion with the Australian Industry Group, one of Australia's employer peak council. So Nicola is a career industrial relations lawyer and she's represented and advised employers across a wide range of industries on issues about workplace relations and employee diversity. She's responsible for the AI group's, a policy response and representation in relation to legislative reform, and she was involved in the respected work legislative amendments and the more recent T tranches of industrial relations reform, including the closing loopholes bill. And she's served on a wide range of advisory bodies and consultative forums. On the stage tonight just here is Judy Singer, who's a sociologist and author.

[\(00:46:16\):](#)

She was described in a guardian Australian article earlier this year as the mother of neurodiversity. She's credited with inventing the term neurodiversity in her undergraduate honors thesis at UTS as an addition to the categories of intersectionality, and she's the author of Neurodiversity the Birth of an Idea. She has long been an advocate and activist for persons in the neurodivergent community, particularly those on the autism spectrum. And she also has lived experience of autism in her own family across three generations. Second, from the right over there is side Ashia side is from Melbourne and is an immigrant Australia from Pakistan. He's a rideshare driver and an activist with a rideshare driver network and he's passionate about making that industry a better place and he's a strong advocate for free remuneration, better working conditions and more transparency. And he has been campaigning for some time to stop the exploitation of all workers, including migrant workers. He's got extensive knowledge and firsthand experience of the right industry. Having completed, I'm told over 25,000 trips since 2015.

[\(00:47:37\):](#)

Then in the center we have Dr. Anna Cody, who is Australia's sex discrimination commissioner. She was appointed to that role commencing in September of this year. Before that, she had a distinguished career as an academic, a lawyer, and a passionate advocate for human rights. Immediately before her appointment, she was the dean of the School of Law professor at Western Senior University for four and a half years. And before that she had a number of roles, one of which was director of the Kingsford Legal Center at the University of New South Wales. So to Anna's Wright is Karen Isles. So Karen is a ragab aboriginal woman, a lawyer, and a consultant. And the founder and

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principal solicitor of Violet Company Legal and Consulting, which is a woman and indigenous led social enterprise, which specializes in inclusion, gender and race-based issues in the workplace. And her firm provides legal advice, representation, mediation, workplace issues, and for those who've experienced sexual assault, Karen sits in the boards of several NGOs and other bodies.

[\(00:49:02\)](#):

And in 2022, she was awarded the inaugural New South Wales Law Society Pro Bono Service Award in recognition of her outstanding service to the New South Wales legal profession and the community. And finally we have on the far right Dr. Anna Cher, who is an associate professor at the University of Sydney and is the chair of the discipline of government and international relations in the School of Social and Political Sciences at that university. So a global migration expert as the issues of migration intersect with public policy and comparative politics. Her research covers immigration, gender and racial diversity inequality and labor market and regularly change as well as skill selection of migrants. And she has advised Australian overseas governments on immigration policy and she has written three books on migration that cover skilled immigration, gender diversity, and workplace exploitation. So there our speakers this evening, each speaker will get five minutes as early indicated to speak. Perhaps the speakers can just stay in their chairs and then I'll get to ask some questions. So we'll start with Nicola and then we'll proceed from there.

Nicola Street, AI Group [\(00:50:31\)](#):

Good evening, I thank you to the Australian Institute of Employment Rights for the invitation to speak this evening. I'm here in Wonga and Gadigal land in Sydney and pay my respects to elders past and present. I would also like to acknowledge the work of Emeritus professor Ron McCallum, Justice Hatcher and that of my fellow panelists here this evening. Firstly, I'm pleased to see that we're discussing the issue of diversity as an integrated issue with a current industrial relations topic. Recall speaking at conferences years ago arguing why diversity and why diversity is good for business as a standalone issue that needed to be argued. So to see diversity prominently in a topic about voices at work and reform is a good thing. Noting of course there is always more to do and I acknowledge Professor McCallum's remarks earlier as Justice Hatcher has said, my name is Nicola.

[\(00:51:23\)](#):

I'm with the organization, Australian Industry Group, and I'm here today to give the employer perspective about this year's chosen theme. Voices at work. For those who don't know, the Australian Industry group or either AI group is a peak employer body. We're quite old, we're 150 years old this year and throughout this time we've provided collective representation for Australian industry with one of our key areas being workplace relations. We are a registered organization of employers and regularly peer in the Fair Work Commission on behalf of our members, including in major test cases, and we suspect there'll be more of those in the next 12 months. Importantly, AR group is apolitical and we strive to provide constructive and informed influence and advocacy into matters impacting our members regardless of who is in government. I thought given the topic of voice and diversity, that it'd be relevant to highlight the issue of diversity of the business sector.

[\(00:52:19\)](#):

AO Group has a partnership with the first Australians Chamber of Commerce and industry, also known as Fassie Australia's pig body for indigenous businesses and their representatives, Fassie, led by CEO. Deb Barwick is a strong network of indigenous owned businesses that play an important role in Australia's economy and industry supply

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chains. Within AI group's membership, we represent ourselves a diverse range of employers from small to medium business to much larger organizations operating across both traditional and emerging industry sectors. Our origin started as representing Australian manufacturers and today we represent employees in our diverse range of sectors including construction, logistics and transport, technology and professional services, labor hire and recruitment, retail, community and care services and the gig sectors to name a few all very diverse sectors of the economy. And I raise this because when we're considering issues of reform including quite significant reform, understanding that business is itself diverse, is sometimes often lost in the debate.

[\(00:53:22\)](#):

And for instance, phrases and public commentary about impact of workplace relations reform that limit the employee experience to that of big business often detracts from informed debate and analysis. The vast majority of Australian businesses are in fact not big business. There are about 2.4 million businesses in Australia with 80,000 considered to be large based on the 2 million annual turnover threshold. The diversity of business and industry sector is therefore an important consideration when assessing the need and impact of workplace relations reform. Despite earlier remarks about arguing the case for why diversity, I did want to reiterate some key points just to provide some context as to what businesses are doing at the enterprise level across industry sectors in relation to building workforce inclusion. Research has consistently shown that businesses with greater diversity perform better, particularly research from Bankwest, Curtin and the word GIA show that organizations perform better when there is greater gender diversity in leadership and other research studies point to the links between team diversity and better decision-making inclusive teams, for example, overall make better decisions most of the time.

[\(00:54:36\)](#):

And diverse teams, including cognitive and neurodiversity, raises what's described as the collective intelligence of the team, better innovation, creative, more creative ideas, better responses to changing consumer demands and better attraction and retention of talent. These are all reasons why businesses have been not looking at why diversity but are now at the point of, well, how do we achieve this? And to mention some of the measures businesses have adapted and are continuing to implement throughout organizations include offering flexible work arrangements on recruitment to meet the needs of employee circumstances, inclusive ad design, broadening recruitment networks, workplace auditing for diversity and inclusion within operations and supply chains, using commercial leverage from some larger organizations to build diversity in the supply chain with its customers and supplier base. Importantly though on the issue of employee voice, the creation of different employee reference groups to represent and advocate for workers who may be from socially marginalized groups or from less understood groups in the community and where these groups provide an inclusion anchor for various people at work.

[\(00:55:48\)](#):

We are seeing also increasingly employers look at targets not just for recruitment but the promotion of Aboriginal and Torres Strait Islander people, and we expect that this will be an area of growing focus for organizations. I could go on with these measures, but just to provide the audience with a taste of things that businesses are doing because of that alignment with organizational values, the clear business case for diversity, as well as ensuring that we have strong leadership on this issue too. AR group operates AD and I network where we share and facilitate these leading practices, but also try and evaluate their effectiveness and seek honest feedback from businesses as to how effective these measures are. Now these measures, as I mentioned, exist above and beyond the regulatory environment, but I did want to turn to the regulatory environment around workplace voice, particularly around workplace culture and freedom from discrimination, harassment, and other unsafe behaviors.

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[\(00:56:47\):](#)

We know these experiencing these types of behaviors can be harmful for people and business and erodes diversity of voice in the workplace. For this reason, there should be appropriate protection and redress for employees in relation to these types of behaviors. But in Australia we have a quite complex web of federal and state and territory laws that prohibit discrimination on a wide variety of attributes. In total, 14 pieces of legislation prohibit discrimination on multiple grounds in various areas of employment, and these include looking at all the pieces of state and territory, anti-discrimination legislation, federal anti-discrimination legislation, as well as of course the Fair Work Act and its general protections and discrimination provisions. To put this in the context of business operating nationally would be subject to all pieces of legislation that address anti-discrimination and they do so in ways that are quite common, but also where there are high levels of variance in terms of the scope of the protection, the scope of the obligation, differences in definition and the types of attributes protected.

[\(00:57:53\):](#)

A common pain point for employers is the sheer volume of anti-discrimination legislation across jurisdictions, which makes it difficult for both employers and employees to navigate. Employers who quite rightly undertake workplace training and design other preventative measures including safe work design codes of conduct and policies need to be across the detail of these laws. And the current framework makes this difficult given the current and significant overlap of federal and state anti-discrimination laws and fair work laws. It's appropriate now we think for the Australian government to consider rather than seeking to increase protections in the piecemeal way, rather to look at how anti-discrimination laws can be consolidated while continuing to offering the same level of protections and obligations for employers and workers working with the states will be needed for this. Another issue of regulatory complexity is also in the area of respect at work reforms. Now these reforms were incredibly important and just as noteworthy as amendments to the Fair Work Act, and I'm sure we'll hear more about these reforms from our other speakers this evening.

[\(00:58:59\):](#)

We know that we have a new positive duty in the Sex Discrimination Act and that from December this year the Australian Human Rights Commission will be empowered to enforce the positive duty for suspected non-compliance. In addition, we have existing regulatory functions from various work health and safety regulators who may investigate and prosecute PC, who failed to meet the primary work health and safety duty of care, but also psychosocial hazard obligations under various regulation and various codes within state territories. The Secure Jobs Better Pay Amendments also amended the Fair Work Act to introduce a new prohibition against sexual harassment in connection with work and expanded the Fair Work Commission's sexual harassment jurisdiction to seek compensatory relief and other remedies, including a pathway for a range of orders available from the federal court as a result of these amendments. The Fair Work Ombudsman also has become an investigator and regulator and to complaints of workplace sexual harassment and employer compliance with the Fair Work Act and relevant commission orders.

[\(01:00:04\):](#)

The New South Wales government is also currently considering through the New South Wales Law Reform Commission to consider changes to the New South Wales Anti-Discrimination Act that include possible new obligations on employers and empowering the anti-discrimination Board to potentially acquire new functions to address systemic discrimination. So the effect of these changes, while it's important, is that in practical terms,

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employers are caught in a regulatory collision between anti-discrimination law work, health and safety law and fair work laws to prevent unlawful conduct and provide safe workplaces. We consider that's what is needed is for the respect at work council to continue to ensure that state and federal regulators can coordinate their responses with input from our employers and employee organizations. I believe my time is up, so I'll end there. Thank you very much.

President Hatcher, FWC ([01:00:56](#)):

Alright, I won't ask Liam to go yet, just to give him a chance to draw a breath. Judy Singer, do you want to go next, please? Okay.

Judy Singer, Sociologist & Author ([01:01:02](#)):

Alright. So I'm going to start with why is diversity in the representation of diverse voices important in the workplace? I was going to start with, sorry, I wasn't expecting to speak. Next. I'll start with why neurodiversity is important or why diversity is important. And this starts with something that happened about, oh, way before I even went to studied sociology, I was at a study group at my local synagogue and we were asked to come up with as an exercise, we were asked by the rabbi to come up with a better set of 10 commandments than God could. And because I'm an atheist, I thought, sure, I can do that. So what I came up with as my first commandment was on a diversity lest we all end up like onto the cactus of the desert. So the rabbi that sunk in now, so the rabbi didn't hear it or pretended not to hear it, so I was pretty miffed and I thought, right, this is going to be my issue from now on.

([01:02:23](#)):

I want to say what neurodiversity is, but first I'd rather say what it's not because too many people I find are thinking that neurodiversity means neurological disability as a category of otherness. Now why would diversity mean disability? It obviously doesn't. So what it really means or what I expected, what I intended it for it to mean, which is to be honest, I didn't really know what it meant, but I just knew that it's suited the times perfectly. And it's basically, neurodiversity is based on biodiversity, which was coined in the 1980s as a political concept to argue for the conservation of species. That itself was based on the diversity movement, which originated with the struggle of black Americans for civil rights. So my idea just followed on as a subset of biodiversity and the idea that just as biodiversity is important for a flourishing ecosystem. So neurodiversity is important for a flourishing society and culture, and I'm not defining it, I just coined the name for two reasons.

([01:03:49](#)):

One to suggest a catchy name for what I saw as emerging as the last great identity politics movement to emerge from the modernist era. This is at the turn of the millennium. And secondly, to add neurodiversity to the intersections of class, ethnicity, gender, and to augment the disability category, which was at that time was limited to intellectual, physical and mental illness. None of which suited us unless, although obviously there was a lot of concomitant mental illness as a result of recognition and of being around pegs in square holes or the other way around. So the stress that was caused by that also, I did say intersections, not intersectionality because really the intersections are just, as we know, they're the tool of government that they ask about when we do the census for the use of allocation of resources. For me, intersectionality is a bit more problematic, but I won't talk about that now.

([01:05:02](#)):

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I just want to say, oh already. Okay. Well, can I just say one more sentence? So what I want to underline is that I've got a minute. Oh wow. I'm using it up. I want to underline, however get out of it. I want to underline however that I'm not a panglossian or a Pollyanna. I don't want to be sexist about it, about neurodiversity. It doesn't mean that some people seem to think that it are all inherently good. Not at all. And I think that what the issue is, is about neurodiversity is that we as humans have got a moral obligation to find a place for everybody. If we take biodiversity, it has no, there's no morality in biodiversity. If you don't fit, you're dead sort of thing or extinguish. We have responsibility to provide a niche for everybody. And also because it's not a, I'm finishing here, it's not a sorry because it's not because it is a moral concept and because people, it doesn't mean that people are inherently good. That means that there are niches for carers, there are niches for people with disabilities and sometimes there are niches for people who need to protect it for who need to be in protective custody for their own good and for the good of society. And that obviously the issue of welfare and the prison system and the humane prison system is very important.

President Hatcher, FWC ([01:06:49](#)):

Thank you. Liam O'Brien.

Liam O'Brien, ACTU ([01:06:51](#)):

Thank you. And apologies again clearly the departure of Alan Joyce. The legacy still remains with Qantas. I'd like to start by acknowledging country and pay my respects to Gadigal. I'd like to also reaffirm our movement's commitment, solidarity to continue to work, walk with first nations people on their journey and our journey towards reconciliation. I'd also like to start by thanking the institute in particular to Ron for which this debate is named for the opportunity to speak and to share the trade union movement's, views on the importance of voices and in particular collective voices and reflect on the fair go in Australian workplaces. And that's really where I want to start. I want to talk about how the Fargo is tracking in 2023 because really for over a decade, nearly all productivity growth has been taken in profits and now working people are struggling to make ends meet.

([01:07:41](#)):

More recently since Australia emerged from the pandemic, real wages have declined some 6% as of this month. Real wages have dropped to the level that they were in 2010 when the Fair Work Act was introduced. That's more than a decade of real wages growth completely wiped out. And whilst the major factor in this has been the growth in inflation, driven by profit taking and price gouging, which has significantly raised the cost of living and placed extraordinary pressure on working people, we also have to acknowledge that knocking off 13 years of real wage growth in just two years should not have been so easy. And it is a reflection on our system and the voices in it and their ability to ensure that working people are getting a fair go. Last year I was here and I spoke about the importance of collective bargaining and the collapse that had occurred over the last decade.

([01:08:32](#)):

And whilst the albanese government has started the job to repair our bargaining system with the passage of secure jobs and better pay, there is still much more to be done. And because the problem with bargaining is much more than just ensuring that the system is flexible and works for all sectors and all workers, we need a system that is fundamentally fair. One that ends loopholes that some of our country's biggest businesses have been using to undermine bargaining and suppress wages, loopholes that have allowed employers to tip the balance further in their favor. Businesses like Qantas, I might reflect on maybe not bagging Qantas so much given I continue to find myself on

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delayed flights. But businesses like Qantas, which have used labor hire to apply different rates of pay to different members of cabin crew on the same flight, Qantas has split its cabin crew workforce across 14 companies and contractors.

[\(01:09:26\)](#):

On some Qantas domestic flights, you might see as many as five different pay rates for the same classification. All of these workers work for Qantas or Qantas subsidiaries. These are not only loopholes that enable Qantas and other businesses, the ability to circumvent collective bargaining and suppress wages. These are loopholes that strike at the very heart of workers. Having a voice, the fishing of workplaces and by employers enabled by these loopholes, undermines workers' collective voices and tips. The balance in favor of big business and voice is important. Having a voice at work is critically important to work people and the very basis upon which unions exist as unionists, we know that work is a critical part of the human existence. And whilst not for everyone, for many work defines who we are. It is an outlet for us to express ourselves and is often inherent in our identity.

[\(01:10:23\)](#):

Reflect on what Rod said about those that have access to work and how important work is for every member of the community. And we ensure that every member of the community should have voice because our work is a reflection of our abilities. Underpinned by knowledge and skills that we have worked hard to develop over many years and having a say in our work and how it's organized is critical to working people. As I've outlined already, work is also the place where we sell our labor in exchange for a wage. A wage that should provide a decent and dignified existence, A wage that represents a fair and reasonable share of income generated by those that we work for and ourselves. So voice is critical and whether or not working people have a voice or more importantly, an actual say in work not only shapes their lives, but it can also be the difference between life and death.

[\(01:11:17\)](#):

I've asked to also reflect a little bit on health and safety and the aspects of work and the role that workers' voice has in that. You may have been following the campaign of unions in relation to the rise of silicosis and in particular the work of the C-F-M-E-U in relation to engineered stone. For years we've been hearing about the ply to stone masons working with this deadly product. Reports that have said that in some states, as many as one in four stone masons who have worked with this product have contracted silicosis. A product that I might add is not an essential, that is not an essential building material, but a shiny fashion item silicosis is deadly. It's incurable, but it's entirely preventable lung disease. It's caused by inhaling crystalline silica dust. When you cut it, grind it and drill engineered stone, the fine grain dust fills the air and penetrates deep into your lungs.

[\(01:12:08\)](#):

Victims describe it like being strangled from the inside, these workers are being killed and they're being killed for a fashion product as individuals. These workers have no voice. They work in small, largely non-union factories scattered throughout the suburbs of our major cities. It has been unions that have lent their voice to this crisis, exposing the appalling practices of manufacturers who have failed to warn workers who have failed to implement controls to keep them safe. Exposing regulators who have failed to hold manufacturers and employers accountable. It highlights that there are serious consequences in having a system and industrial relations that fails to support, enable, and promote workers' voices. It also highlights that fundamental workers' rights are both indivisible and interdependent. Or over that the fundamental right to a safe and healthy working environment is only as good as the fundamental rights and capacity to organize and enforce them. Finally, our movement finally for our movement.

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These examples show that workers' voices are not just nice to have. They're an essential part of the system, and the system needs to actively promote, enable, and support a diverse range of workers' voices. Thank you.

President Hatcher, FWC ([01:13:20](#)):

Thank you. Alright, Syed Mubashir, next please.

Syed Mubashir, Rideshare Driver Network ([01:13:23](#)):

Thank you President Hatcher. So far everybody know my name is Syed, I'm a rideshare driver. I have completed over 25,000 trips since 2015. I have almost worked every day of the week, every hour of the day, every big event and all public holidays. I started driving with Uber in 2015 and I completed 17,000 trips with Uber until they have unfairly deactivated me in my 2021. Then I kept driving for the fellow rideshare company called Didi. So, so far I have completed over 9,000 trips with them. I have been constantly exploited during the past eight years in the ride chain industry with workplace harassment, unsafe working conditions, being paid peanuts and no rights at all, no sick, no holiday pay, and no super, no award wages and working 12 hours a day and constantly getting used and abused by these companies. Well, in fact, let's call it a modern day slavery, quite astonishing, but high.

([01:14:25](#)):

This is what it is. So during the Covid times, a lot of people who are not from Melbourne, they don't know. We went into an extreme lockdown and Melbourne, in fact, Melbourne was the longest lockdown city in the world. So it's a norm. In Uber, we get rude, and again, customers every now and then, but sometimes they go above and beyond in being rude. I mean, it's a quality, so not everybody have it. So after the lockdown finishes or got eased, they brought in a mask mandate. So a lot of people may have thought that masks mandate didn't help. So let me tell you, when the mask mandate finishes, I catch Covid three times in 12 months. So we were encouraged to the riders to wear the mask. However, one fine morning. I had one passenger told them she doesn't like it, she don't want to do it.

([01:15:21](#)):

I've been told off, I've been harassed, called limes, blah, blah, blah. But anyway, I cop it because that's what we have to do. I dropped her off, she made a false allegation. Within next 40 minutes, my count was gone. So after giving them six and a half years of my life and my heart, my blood, my soul, suddenly I have no livelihood. We are just in the middle of the covid. We're talking about 2021. And unfortunately that time even still as we speak, we don't have anywhere to go. We don't have any voice, we don't have any rights. So I start looking around and then I came across with a very lovely lady with the name of Deborah. She runs her ride share driver network, which is the only registered driver organization for the ride share drivers, which have over 3,500 plus driver members across Australia.

([01:16:23](#)):

And then I explained her and then we tried to manage to put our case in the favor commission. However, it was like a catch 22 because they were like, yeah, nah. And Uber just stayed away. Decline. No, he is not an employee. Thank you very much, both of you. But then Debra introduced me to a very lovely man, Mr. Michael Hamus. And then he took over the charge from there, he disputed and argued my case in the Fairway Commission. But so far we've been just hanging with the rope for the last two and a half years, going nowhere. And then we decided to take it further and we thought to give it a go in the federal court and Michael offered the help pro bono, which is so he was like a kind of macia because at that point, no voice at all. Nobody is even willing for some we don't even exist.

([01:17:21](#)):

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Course, who are you, right? Oh, we never heard it. It's not a proper industry. So anyway, after that, so far it's been over two years, over two and a half years, we are in the middle of nowhere, still fighting for the driver's, right? No voice. A lot of people will ask what a solution to it? That's a beautiful book down there written by Michael Hamus. It has all the solution. Lately the government has introduced closing loophole businesses, but a lot of things like the Honorable Minister have just did a very nice speech with a great sales speech. I mean it's good, but technically that is to benefit the bigger joints. And a lot of you will get the astonished that Australian Labor Party got a very big donation just a week before for the federal elections. So in case any of you know what charity work they know and I'm not aware of, please do let me know. The LP does a charity work and in the end I would like to ask all my fellow Australians, Australia is all about mateship. We do care about the morning coffee beans comes through a fair trade. But why don't we care about the Uber drivers, the gig workers who take you in the morning to your work to catch a flight, to take you home safely, overnight? Why don't we have a voice and when and how we will get it? Thank you very much.

President Hatcher, FWC ([01:18:53](#)):

Alright, Anna. Cody, we'll go next.

Dr Anna Cody, Sex Discrimination Commissioner ([01:18:56](#)):

Thank you very much. And I'd also like to begin by acknowledging the traditional owners of the land that were on the Gadigal people and pay my respects to elders past and present and also to all indigenous people who are here with us. So I wanted to focus on three elements about women's participation in work. And the first is intersectionality, second gender pay gap. And the third is around the respect at work and the measures through that. So the first issue, intersectionality is absolutely fundamental to how we think about equality. We have to think about the complex ways in which women, all women experience in equality. So what a first nations woman experiences at work is different to what a woman with disability or a trans woman. And that complexity has to shape all of our policy responses. So then thinking about the gender pay gap in Australia, it continues to be 22%.

([01:19:52](#)):

With Australia trailing the rest of the world at number 46, despite being a wealthy nation. Why does that occur? Women are in low paying industries that are highly feminized and we don't rise to the senior positions. There's also a lack of shared caring responsibilities with women overwhelmingly carrying the care burden, which is mostly unpaid work. Women also face gender discrimination, not getting promoted and facing sexual harassment. Current estimates are that 128 billion is the cost of barriers to women's participation in the workforce. Some measures to address this would be addressing some of the flexibility available to all workers in the workforce to having paid parental leave to all parents not having a distinction between primary and secondary carers that would impact on our gender pay gap. It's been introduced one in four private employers and in the New South Wales public service and it would be a huge opportunity across the Australian public service as well.

([01:21:01](#)):

So now turning to respect at work. We know from the national inquiry that 33% of women have experienced sexual harassment in the last five years for culturally and racially marginalized women. That's one in two women. So a higher rate for young women and girls, 47% of them. And similarly, high percentages for the QT plus community and First Nation women experience even higher rates at 56%. And what isn't working is our individual complaints based approach. It puts too much emphasis on the individual to uphold human rights, to make our system fairer, the



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person with the least amount of resources emotionally and financially bears that cost and discrimination law in Australia functions as the way in which we assert human rights as we don't have a bill of rights and yet only 18% of women make a complaint. So we are very excited about the positive duty beginning on the 12th of December as mentioned earlier, and its potential to bring about systemic change, it's important to recognize that it's broader than sexual harassment.

[\(01:22:16\)](#):

It's which is a characteristic which distinguishes it from Fair Work Ombudsman and Fair Work Commission. What it will cover the positive duty is that it covers relevant unlawful conduct, which includes discrimination on the ground of sex in a work context, sexual harassment in connection with work sex-based harassment in connection with work and also conduct, which creates a workplace environment that's hostile and victimization. So there are three good things currently happening in terms of gender equality. One is the positive duty on employers. That's starting two, a costs model which was introduced yesterday, which is based on a free access model. And three, we need to increase the amounts of compensation that's paid to women who experience sexual harassment. And the judgment by justice Anna Katzman awarding 268,000 is a good first step in that way. So what needs to change? We need to value women's work.

[\(01:23:21\)](#):

We need to pay low income culturally and racially marginalized women who do our care work a proper wage. We need to pay parental leave to all parents regardless of whether they're primary or secondary carers. We need to make our boards and our leadership teams gender balance, but also include all forms of diversity. And that includes first nations culturally and racially marginalized people and people with disability as well. We need to go hard on eliminating that unlawful conduct, sex-based harassment and the conduct which creates hostile work environments. And we need to educate judges on the impacts of this behavior of sexual harassment so that they award proper compensation.

President Hatcher, FWC [\(01:24:07\)](#):

Karen Isles.

Karen Isles, Violet Co [\(01:24:11\)](#):

Thank you President Hatcher. I'd like to pay my respects to the gal people whose land were on today this evening and also acknowledge my ancestral connections to country to Gunde and Roen as a descendant of the rag Aboriginal people. I'd like to provide tonight an example of a case that myself and a peer at the bar represented. I have her permission to share this with you and I think that it illustrates the question of whose voice and I would have loved the shadow minister, the Honorable Lia Cash to be here tonight. And also I would like to engage the AIG and ACTU in the conversation around whose voice, because for me in my practice, I have represented just short of 10 Aboriginal women who are all union members in the last 12 months and represented them in discrimination claims that their trade unions wouldn't.

[\(01:25:12\)](#):

I'd like to provide, and I'll use the name Margaret to describe her. Margaret is an aboriginal woman. She left employment at an airline because of the Covid redundancies. She had an impeccable and unbroken employment history and she was a lifelong union member. After being made redundant, she gained an aboriginal traineeship with

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one of Australia's largest mining companies. They're quite renowned for their commitment to reconciliation. She was placed on a remote mine site from day one. She experienced little digs not automatically given accommodation like others, the community and workplace resistance to fly in fly outs and indigenous people taking the jobs of local white kids. From day one. There were remarks that were racist and sexist and then escalating into sexual gestures. And context of all of this was that there had been a big inquiry led by Elizabeth Broderick in WA into sexual harassment of women in remote mine sites. And it had damning findings. And I think blind Freddie could tell you that my client Margaret was walking into a situation where sexual harassment and racism was very likely to happen. The trade union, my old union, the C-F-M-E-U was in a really tricky spot. The complaint involved approximately 10 of their long-term members harassing my client with a zero tolerance policy. Of course, the workers denied it. She was a new member and a trainee at that and that's why I represented her rather than the union.

[\(01:26:49\)](#):

She raised a complaint and she then went off on sick leave. She consulted a doctor and the doctor fired certified her unfit for work because of workplace racism on the certificate. And for aboriginal people, often you see this withdrawal as a cultural and a trauma response that is very poorly understood in my experience by employers. She then acquired a serious mental health injury the first time in her life that she had been diagnosed with a serious mental health injury. Unfortunately, her workers' comp claim was unsuccessful. The assessor knocked her back for provisional weekly payments despite the medical evidence because the assessor made a determination that those things weren't racist or sexist. The company didn't investigate until nine months later of persistent prodding her word against 10 others. An external independent investigator ran an investigation that myself, as I would like to consider somewhat specialist in the area, was not in all culturally safe in the investigation, nor at all trauma informed.

[\(01:28:05\)](#):

Ultimately, she was sacked for refusing the direction of her employer, which was to turn up to work. She didn't want to turn up to work because her doctor said, you will get worse if you do in the Fair Work Commission. At the time, the employer stonewalled her and were pushed into the federal court, which is a cost jurisdiction that as someone on she'd been on unpaid leave for over 12 months, she'd been made homeless because of that. And obviously her mental health had deteriorated as well. She wasn't in a position to continue to the federal court, ditto the state-based anti-discrimination board. So I think if we are looking for what does this case show us, there's five areas where I think we need to really understand. One is to listen to the lived experience of First Nations people and in fact all people, as we've heard from the panelists tonight, we must listen and privilege the lived experience of those people whom, which these policies and laws impact.

[\(01:29:13\)](#):

Two, we urgently need a capability uplift in all sections of the industrial relations landscape. Three, we need to drastically look at complaint mechanisms in workplaces. They need an overhaul. They're not trauma informed or culturally responsive. Four workplace investigations. We desperately need some regulation, training and specialization. Bringing in former police officers or employment lawyers with no understanding of the drivers of sexual harassment or racism just simply doesn't cut it. And fifth, we need a mechanism with the Fair Work Commission, the anti-discrimination Boards and workers' comp really working together to wrap around and support workers who experience these things because as my colleague has just said, workers as individuals trying to take on the Goliath that is the system is simply an exceptionally high burden to bear and is quite intolerable I think, in our system. So thank you.

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President Hatcher, FWC ([01:30:19](#)):

And finally, Anna, Boucher.

Anna Boucher, AIER/ Sydney University ([01:30:21](#)):

Thanks. So I'm going to focus on migrant rights. Recent legislative changes to industrial relations, employment law and migrant rights in Australia have taken what I call an integrated approach. By this I mean that the federal government in its reforms last year and this year has largely not singled out migrants with a few exceptions to the migration Act rather sought to secure for them the same rights as Australian workers, often in the same legislative packages. And I think this is a politically and legally astute move because it equalizes those relationships and is consistent with Australia's commitment to a fair go. It also draws less attention than would otherwise be the case to migrants as a specific group, the process of which could be politically exclusionary. As we know when we look at such reforms in other countries, and we know from recent treasury predictions that migration is growing even beyond what they previously fought with intergenerational report.

([01:31:21](#)):

And this means that a focus on migration within our industrial relations and labor law reform as an issue will only accelerate in Australia in future decades. So following this political and legal logic, migrants as a particular group are not represented in great detail explicitly in explanatory memorandum to the closing the loopholes bill. And yet I believe they will benefit from it building on the reforms last year in the secure jobs better pay reforms and the reforms to the migration act that I mentioned in June of this year. So I'll mention a few ways in which I think this bill will be beneficial to migrants. The first is in the clarification of the definition of being casual employment, which will now look at the practical reality of the employment relationship. This will be beneficial to migrant workers who will not necessarily have the capacity to interpret an employment contract or access to legal counsel or membership of trade unions who could represent them or maybe more used to other legal systems.

([01:32:22](#)):

So having a more accurate understanding of the employment relationship will be beneficial, especially when we factor in visa vulnerability. The second is the capacity of the Fair Work Commission to regulate labor hire arrangements. I think we know that migrants often work in such arrangements and these reforms could help avoid underpayment compared with those on an EBA arrangement. And in the analysis I've done, often migrant workers are not in employment situations where they're regulated through an EBA arrangement, better regulation of independent contractors. We know we've heard story already of how important this area of work is for migrant workers digital platform work. And this is also demonstrated in the work of the institute. We know there are cases of egregious underpayment, unfair dismissal, bodily risk, and even death to migrant workers in this area has been well-documented. And so I think the protections in this bill, whilst it's not perfect, we were discussing before the imperfections are definitely an improvement.

([01:33:27](#)):

And the accompanying reforms against sham contracting will also be beneficial. But I think perhaps the largest reform in this package that will benefit migrant workers is around criminal liability for wage theft in some instances imprisonment up to 10 years. And also a proposed offense of industrial manslaughter under the Work Health and Safety Act. In my book, patterns of Exploitation, which looks at exploitation patterns in four countries. These sorts of provisions in California and in Ontario in Canada have been important not only in addressing serious underpayment

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and providing some relief to the families of deceased workers in instances of industrial manslaughter such as occurred in Toronto when five men fell to their death on a construction site that was not sufficiently safe rushing to complete a deadline on Christmas Eve. But they also act, there's evidence, at least emerging evidence because they're quite new reforms that they act as a general deterrent to employers of such behavior.

(01:34:28):

So I think these reforms alone will not completely change the patterns of exploitation and the capacity for voice of migrant workers in Australia. And there are, as Karen as I have suggested structural impediments to voice, but they're important. We know that the Parkinson review, we will see further reforms from the Parkinson review probably in December of this year. And we've already seen some reforms to the Nixon Rapid response review coupled with multi-employer bargaining, which as I argued last year is also beneficial to vulnerable groups including migrant workers. I believe this entire package of reforms, if we can see it in that way, will raise the floor including for migrant workers. Thank you.

President Hatcher, FWC (01:35:15):

All right, well I'll get to ask some questions now. Can I just say at the outset that no one should imply from any of my questions what my views about the matters are, although they might imply what my interests are. So I'll start off with this with you, Liam. You've heard what Karen had to say in respect to the case she described. How does the union movement ensure that a voice is given to its female membership, particularly when they work in a male dominated union environment and have suffered from sexual harassment?

Liam O'Brien, ACTU (01:35:50):

I can't speak to the specifics of that matter, but I want to talk about just generally how I as a unionist have approached it. But indeed how I think my colleagues and comrades do. I think we will all agree that every worker has some basic human rights and that they have an obligation or they have a right to be represented no matter what. And quite often my own experience over 20 years in particular when it comes to interpersonal issues in workplace are very difficult often for unions to deal with. But that should not in any way impact the right of workers to be represented and to have those issues ventilated. Look, I agree a lot with what was put in particular in terms of the five sort of actions that should be taken. I think we do need to have much stronger awareness in workplaces around capability around sexual harassment.

(01:36:40):

I think from a work health and safety point of view, we have woefully low capability when it comes to health and safety generally. And I think that applies really specifically in relation to things like sexual harassment, awareness around other psychosocial hazards and bullying harassment more broadly. So I think we can all do more. I think one of the really important things that we want to see happen in workplaces when it comes to issues like this, but more broadly around health and safety, is that we do need to lift capacity. It's not all going to be about legal rights. We need to ensure that employers understand their legal obligations, especially as new ones are being introduced. We also need to understand how workers unions in particular can collectively assist in enforcing those rights. So I think there is a long way to come and I think my experience with unions is that we're ready to do that work.

President Hatcher, FWC (01:37:32):

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Alright, well Karen, we've heard the case that you've described, as you know, we've had recent legislative reforms to give more rights and avenues of recourse for women who have experienced sexual harassment in the workplace and that includes access to dispute resolution of the Fair Work Commission. How practical and realistic do you think it is women who have been sexually harassed in a variety of circumstances to utilize those ER avenues and is further legislative reform or community support required to make them effective?

Karen Iles, Violet Co ([01:38:06](#)):

I think the laws in Australia and the states and territories have been on a trajectory of continual improvement and that's fantastic. The respect at work legislation is to be commended, but I categorize the system as cooked. I think that when you've only got 17% of workers who experienced sexual harassment bothering to report it to their employer, that is a massive indictment on their confidence in employers to take this seriously to understand the issue and grapple with it. And of those 17% of brave people who are probably going to end up having a psychological issue and leaving the workplace anyway, of the 17% that do, almost half of them report that when they made a complaint to the employer, a formal complaint, the employer still did nothing. And then of the other 56% said that they were dissatisfied with how the complaint process went. So there's a massive confidence issue in how workplaces deal with and respond to these sorts of complaints and simply people aren't speaking up. And you see this in the criminal justice system in relation to sexual assault as well. Women aren't speaking up because they have no confidence in the system. So they're not even getting to the Fair Work Commission or the Human Rights Commission or the anti-discrimination Board because they don't have confidence that their employer will actually lift a finger.

President Hatcher, FWC ([01:39:42](#)):

Alright, well my next question is to Nicola. I hope you can hear me Nicholas. So you heard what Saed had to say about his experience in the rideshare industry. Obviously you are dealing at the moment with proposals for legislative reform about which would affect that sector. Do you see those reforms benefiting someone like Saed or do you think that the detriments might outweigh the potential benefits?

Nicola Street, AI Group ([01:40:18](#)):

Yes, thank you Justice Hatcher. Look, I think ultimately we don't know the closing the loopholes bill contains, whilst it's dealing with the issues of minimum standards and guidelines federally, which is a good thing and is looking at minimum standards, we don't know what those standards are. It's effectively an open book for a third way of employment or engagement that's been given to the Fair Work Commission with incredibly wide discretion. Beyond that goes beyond the setting of minimum employment conditions for employees through our award system. So it is really hard to forecast what kind of conditions would be determined, what the cost to the industry that would be, what sorts of conditions would be subject to these guidelines and ultimately orders. So it's not a position of you need to look at minimum standards, but the architecture that the bill provides is incredibly loose and uncertain. So it's very difficult to draw conclusions from that.

President Hatcher, FWC ([01:41:19](#)):

Alright. And has the Australian industry group advanced any proposals of its own for regulation of the ride share and the sector and the gig economy more broadly? Perhaps if there has describe what those are.

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Nicola Street, AI Group ([01:41:32](#)):

We've been involved in, particularly in the areas of work health and safety. We've worked with some of those gig platforms to launch one of the first industry codes for work health and safety in that sector. We have provided submission to the Senate inquiry who's considering the closing the loopholes bill with a raft of suggested improvements that could be made to the bill's provisions. So is something that we accept that there needs to be further regulation in this space. It's just what that looks like and to ensure that it's targeted and can be properly evaluated.

President Hatcher, FWC ([01:42:09](#)):

Alright, well just following on from the ride share and gig economy topic and voucher, do you see benefits for migrant workers arising from the proposed changes to regulation of the gig economy?

Anna Boucher, AIER/ Sydney University ([01:42:25](#)):

Yeah, no I do. I mean, as I mentioned in my speech, I believe that it's an improvement beyond what exists at present and in the annex to the explanatory memorandum, migrant workers are explicitly identified as one of the groups that will most benefit from this. They're heavily overrepresented in this sector. We were discussing before the problems that it will only be moving forward. So there were people who've already had their relationships with these apps terminated so they won't be able to bring claims. So it's not perfect, but I do think it's an improvement in other systems like California. They've experimented, for instance with offering superannuation on these apps to workers. So yes, we know a lot of international students are using this kind of technology to gain employment.

President Hatcher, FWC ([01:43:14](#)):

So you've no doubt been listening to some of the public debate about regulation of your sector and the gig economy and that there's sort of two polar views. One is they should be treated just like employees with all the same rights and other people say on the other end nothing should change. And people like you love the flexibility and the freedom and you want to stay contractors. Now obviously you've had more experience about this than anyone in the room and you've engaged with more gig economy workers than anybody in the room. What do you think is what they want and the sort of system that they want to be in? Alright, so one thing is very

Syed Mubashir, Rideshare Driver Network ([01:43:51](#)):

Interesting, which a lot of people doesn't know when they classify them as an independent contractor. So the amount of hours they're allowed to work is usually 20 hours a week. But when they work as an independent contractor, they're not being considered as their 20 hours. So they can go above and beyond. So this is a kind of loophole. That's why they have told those people like look, if you're going to stick to that independent contractor thing, that's what it is. And then the second thing, there's a very important topic like not being paid between the jobs. Okay, fair enough. So what if you're getting one job an hour and you're not doing anything? So let's suppose you got one job in an hour, which is of 15 minutes, you've got \$15 paid for that, then you got another job in the next hour, another for \$20.

([01:44:39](#)):

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So technically you get paid \$35 in two hours, but they are saying they will only going to calculate the time you are actually on driving. Okay, fair enough that in that case you're supposed to work like hold day. So where the safety comes, because at the moment when you talk about the multiple apps cross platform, so one platform allows you to work 12 hours, another allow you to 13 hours. So you finish with them, you start driving on the other platform. Meanwhile after eight hours, that is good to go another 12 hours. So you can literally sleep in the car and keep going, which is not safe for the driver itself, the riders and the fellow road users. So definitely there is a lot more to dig into that and come up with a proper architecture rather than a wider, broader definition. This is something specialized, it's serious.

President Hatcher, FWC ([01:45:30](#)):

So you need a bespoke solution is what you're saying?

Syed Mubashir, Rideshare Driver Network ([01:45:33](#)):

Yes, and we are employees because these companies control us. Flexibility is just, yes, you can only choose when to start, but if you refuse a job, you get penalized. They will tweak you the way. If you want to make money, you have to work in these certain hours and then they have to put a cap on. It's like if you need six people on the job, why you put 20 people and none of them make money, just say okay, we need six people today and rest can move on. It's like a casual employment and that's how it should be.

President Hatcher, FWC ([01:46:02](#)):

Alright, thank you President Judy Singer in the fair work commission. Obviously we deal with unfair dismissal cases and some of my colleagues in the audience and we have to often deal with employment relationships which are broken down and come to an end because employees have exhibited what might be called unfamiliar or even challenging behaviors which don't fit within the employer's expectations. Now I looked at your blog today and I noticed you said that quote, I'm not here to make capitalism more efficient, I'm here to make it more humane. So with that in mind, can you give any advice as to what approaches you think employers can take in terms of recruitment and management of neurodiverse people to ensure that they can achieve a mutually rewarding and productive employment relationship?

Judy Singer, Sociologist & Author ([01:46:57](#)):

Well first of all, I think they need to be aware of the conditions that people have that they're hiring. And then there are examples of good practice, but a lot of the ones that I'm aware of are mostly in big corporations, particularly in it and since most IT people, not most, but it's a very high autistic population there obviously they want to keep their,

President Hatcher, FWC ([01:47:25](#)):

And I think you were a former IT worker yourself.

Judy Singer, Sociologist & Author ([01:47:27](#)):

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Yeah, that's the only job I could get when I was younger. So the only thing is at that, and then there's all, I mean there are just neurodiversity specialists sprouting everywhere. So find someone that can advise you, that can teach, not teach you, but train you and train the workers to.

President Hatcher, FWC ([01:47:55](#)):

And I just want to clarify something you said in your presentation about neurodiversity and disability in the context of the workplace environment. So should we be treating or should employers be treating neurodiverse people as if they have a disability? Because I think in at least some cases they would meet the legal definition, which would attract all the protections of the disability discrimination legislation for disabled people. Or is the alternate view, and I think you were coming close to this, is that they should just be treated as persons on the full spectrum of human cognitive difference?

Judy Singer, Sociologist & Author ([01:48:36](#)):

Well, because I don't know much about law or anything really. I understand that there's legislation that covers all those finer points. It's a matter of disclosure as well. To disclose or not to disclose is a very difficult decision. It could go pear shaped. So there has to be some kind of sense of confidence that you can disclose and I don't know that there's that much awareness, particularly in smaller businesses of how to deal with questions like that. I

President Hatcher, FWC ([01:49:16](#)):

And Liam, do you want to say anything about this question that is, I know you missed Ron's presentation, but I think you heard duties as to what unions can do to advance participation of the neurodiverse and the disabled in the workforce. I know these are very difficult issues. I spent a lot of years dealing with the supported employment workforce. What do you see as the future in that space?

Liam O'Brien, ACTU ([01:49:43](#)):

So I think we need to make more work more accessible to more people. And I think as a movement we have always been about that. I reflect on my time as an official where we did take very proactive steps in what were very manual industries to make more work available to more people that wasn't just good for workers who were entering the workforce who might've had a disability. It was good for those that were there too, especially in physically demanding or cognitively demanding work. So I think the first thing I would say is we want to meet people where they are. We want to make sure that work is as inclusive as possible. And I think when it's unions and employers working together, especially I think goes without saying that in the tightest labor market in history, we're all economically motivated to increase participation. I did catch Ron's speech, I was listening to it on the way in.

([01:50:34](#)):

I think it is disturbing that now nearly a decade on from the NDIS, we haven't lifted the dial nearly enough in terms of we think participation amongst those with disabilities. But I think what it is about is it's about making more work more accessible. And if we think about how work is evolving, a generation ago the dominant form of work was routine manual work, the cognitive work is increasing and so we need to think about how the changing nature of work is impacting people's ability to access the workplace and enter the labor market. And so I think taking a principle which is making more work more available is a good starting point in workplaces. And I think unions are absolutely committed to that.

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President Hatcher, FWC ([01:51:14](#)):

Alright, well I just wanted to turn, I'm not sure how much time we've got left, Michael, but I wanted to turn to some issues about gender pay equity. So Anna, you spoke about the gender pay equity issue in your presentation and there's various measures of what it is. I think the latest ABS figures show that it has reduced over the last decade, but remains substantial in terms of what we do as a fair work commission. The award system only sets pay for 20% of the workforce and covers 11% of the wages bill. There's issues with effective collective bargaining being possible, particularly with low union participation rates. And some of those things might be taken as indicating that the formal industrial relations system cannot by itself close the gender pay gap. What do you think we need to finish the job? What are the tools available and what are the tools we can put in place to close that gap? Alternatively, do you see it as a foreseeable proposition or something that's just not achievable?

Dr Anna Cody, Sex Discrimination Commissioner ([01:52:22](#)):

I absolutely see it as achievable and I think that it's reduced over the last 10 years by something like 0.2%. So it really hasn't been going down very quickly and that it actually increased at one point as well, I think in 2020. So it's not a definite movement towards improvement. The measures that I talked about in my speech were the things that we can do. So absolutely I think that there is a role for the Fair Work Commission and it's also, it is about valuing women's work. So it's both that where there's highly feminized industries such as early education, aged care, disability care, all of those jobs which are done by many migrant women, culturally, racially marginalized women, those are the jobs that we need to actually recognize the value of that work and pay it appropriately. And that would have a significant impact on the gender pay gap. The other would be around encouraging a sharing of caring responsibilities. So ensuring that men take up some of that caring responsibility and paid parental leave would be one way of actually doing that for all parents coming in and flexibility. So having flexibility around work which would benefit again men and women, but would also have the impact of reducing that gender pay gap.

President Hatcher, FWC ([01:53:47](#)):

Well Liam, you heard what Dr. Cody said about properly valuing work in female dominated industries. How do you see the multi-employer bargaining reforms introduced in the secure jobs better pay legislation as working towards that objective, particularly having regard to the first one off the rank as it were in childcare and early education sector?

Liam O'Brien, ACTU ([01:54:17](#)):

Absolutely. I think they're critical. I think Australia has one of the most gender segregated workforces in the OECD and developed world. And in particular the care sector has been able to access bargaining under the previous provisions. Firm level bargaining doesn't work when you work in a childcare center with 20 employees. So I'm excited by what's coming. I'm excited by what potentially that holds for care work broadly, but in particular for closing the gender pay gap. I'm also excited to see what happens with the new provisions and paths that you've been given around gender equity and how those can be realized. Because I think when it comes to bargaining, we know that women have been excluded from the bargaining system. Her industrial system has largely been built around private sector male work. And so I think the changes to multi-employer bargaining, whether it be in childcare, potentially in areas like aged care where not only do we have high levels of female participation in the workforce, but to the points

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made about migrant women and other workers, I think there are huge opportunities to close some of those inequalities.

President Hatcher, FWC ([01:55:20](#)):

Alright, Nicola, I might turn to you on this topic. So you've heard what Liam said about multi-employer bargaining. Do you accept that that has any potential benefit in terms of addressing gender pay equity issues or if not, what from your perspective is the best means we have or should have to close the gender pay gap?

Nicola Street, AI Group ([01:55:47](#)):

I think one of the challenges in looking at pay equity, particularly in the care sector, is the funding arrangements for those sectors. And that's an issue that comes out in issues around bargaining and multi-employer bargaining particularly where there's a carving up of the sector based on how funding is distributed to different employer organizations. It's a mix of for-profit operators, those who exclusively rely on government funding, not-for-profit arrange organizations as well. So you see a variety of different business models if you liked in providing those services, which makes the implementation of supported bargaining orders can quite difficult and creates a lot of issues to think through. We know that the gender segregation or industry and occupational segregation along gender lines is one of the main contributors to the gender pay gap. It is obviously work that our group's involved in trying to promote female participation, particularly in traditionally male dominated sectors.

([01:56:54](#)):

Something we've worked very hard on over the years. It's something that goes back to our school system in terms of the subject choice that individuals make as well and looking at the subject choices that the boys and girls study. And so that obviously flows on through university, what disciplines are studied and what demographics are in place in the workplace in terms of where women and men tend to work in which industries and occupations. So you need see a variety of policy settings. I think there was reference to parental leave. Look that is an important area of reform. The government has its paid parental leave bill and parliament and that provides and commits to the government to its policy about providing and supporting more of a shared care model. That's something that we're very supportive of and we think should in time help address issues around pay equity to the extent that caring responsibilities contributes to that as well.

President Hatcher, FWC ([01:57:55](#)):

Well, just a follow up question, I think statistically there's a strong correlation between casual employment, the femaleness of the workforce, insecure employment and low pay. How do you see the recent developments of law with respect to what is casual employment and its incidents? So we had and the section 15 a definition introduced by the last government and the current evolving proposals for new casual definition intersecting with gender pay issues.

Nicola Street, AI Group ([01:58:31](#)):

Yeah, so casual employment provisions. See the great position is that we're obviously in favor of the current 15 a section that's the Fair Work Act. It picks up a variety of matters that were considered by the full bench of the Fair Work Commission in the casual employment test case. What the proposed bill is looking at is a far more complex definition as well as multiple conversion channels beyond casual conversion. What we hear from employers is that casual conversion is generally something that is accommodated when it is requested, although in many instances

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when it is offered to employees, if issues are around the casual loading mean that often casual employees may tend to or prefer the higher rate of paid. Obviously demographically, we know that there are a large number of women, but also young people who work casually. A lot of students and a lot of some older people too. It's transitioning to retirement. So it is a diverse demographic, but we believe that the certainty that's providing the current provision of the bill combined with the current provisions throughout modern awards is an appropriate way to manage casual employment.

President Hatcher, FWC ([01:59:50](#)):

Alright, so I'll try and squeeze in two more questions. Firstly, and Anna Boucher, you discussed the issue of underpayment amongst migrant workers. One of the issues be deviling enforcement of minimum rates and minimum standards is that in certain sectors you have strong ethnic workforces, but also ethnic employers of the same ethnicity and enforcement agencies from outside have difficulty in having visibility in what is happening in those sectors. How can we get a better, and the restaurant industry is a Cal classic case of that. How do we get a better grip on enforcement in sectors like that?

Anna Boucher, AIER/ Sydney University ([02:00:41](#)):

I mean, the first thing about co-ethnic exploitation based on the data in my book is it's not as common as people think. It's perhaps more visible, but there's actually more exploitation happening with Anglo-Celtic employers and racialized minorities than the other way around. So I'd just say that what I observed in especially California, is a lot more engagement of people of migrant background in these inspectors and even often leading them. And I think that if the inspectors themselves were more diverse, there was more. And I know that Fairwork Osman, for instance, has a migrant specific case, but if that really flowed through the institutional design, a lot more engagement with community languages and building trust with these minorities, it would be more effective. I think that's a big part. It's a cultural question as much as a legal one.

President Hatcher, FWC ([02:01:31](#)):

Alright, one last question. This is for you Karen. We've seen the recent referendum proposal for an indigenous voice to be inserted in the constitution, rejected by the Australian people. Do you think that indigenous people are getting a voice and a fair go in Australian workplaces? And what policy improvements can you envisage in that area?

Karen Iles, Violet Co ([02:01:52](#)):

Thank you. I'd like to just start by prefacing this, that the only aboriginal person on the panel and I feel a great obligation to do justice to this question, but I would just say that my remarks are my own. I don't have authority to speak on behalf of my community or the entirety of indigenous Australia. I think the referendum was clearly for me and many of my colleagues, very disappointing. And at the moment I think there's a profound breakdown in trust in this country, but also within workplaces. I would urge everyone to read the most excellent work of UTS JAMA in their Gary Eer report, speak the Truth. And there it says, to improve the, and this was written several years ago, to improve the experience of indigenous people at work. We need to stop asking non-indigenous people and hear directly for indigenous people so we can center and respond directly to their employment needs and experiences.

([02:02:57](#)):

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There's a bunch of recommendations in that report and I would urge every workplace, including the Fair Work Commission, the Human Rights Commission, the ACTU, the AIG and others to implement those. But I think certainly that capability lift is urgently needed in all of those institutions to start to rebuild trust and move beyond. And finally, to just say, to move beyond performative allyship, performative allyship is when everyone does their anti-racism training or their harmony day or NAIDOC week. But we need to move beyond that and start talking about truth telling and getting to the heart of what racism really looks like in this country and then starting to craft the appropriate responses to deal with it. So I hope to my elders, I've done that question justice.

President Hatcher, FWC ([02:03:46](#)):

I thank you. So that's all the time we have for questions, so I'll hand over to Ron to wrap up the debate with his reflections on what we've talked about tonight.

Emeritus Professor Ron McCallum ([02:03:54](#)):

Thank you President Hatcher. And Adam, if I may, your searching questions have filled out the debate amply and wonderfully and made my job a lot easier. First, we heard from the ILO and we all know that the ILO represents employers and employees and governments. It's our major international body and it's always important that it's become a tradition in this debate to get an update from the ILO. So I value that very much. We then saw the Minister Minister Tony Burke, MP and shadow minister, Senator Michaela Cash giving their political perspectives on the closing loopholes bill. And that was a little bit amplified by Nicola for the Australian Industry Group, a group that I long admire and Liam O'Brien from the ACTU.

([02:04:53](#)):

My sense is that this country needs to regulate forms of gig work that are related to platforms. I know that the closing loophole bill is simply limited to platforms because I think that's probably the only way to do it. My understanding is that the platforms themselves are not totally against regulation because it's in their interest to have a more secure workforce and it's in their interest to ensure that regulation best suits them. And we saw from Ed's experiences and also from what Dr. Anna Cher said, that there are exploitative practices. So I think whatever happens in the closing loopholes Bill, given the changes in work, we need an intermediate category of employer, like persons who are employed by platforms. And the issues may turn out to be what is the level of regulation. I suspect what is ever given to Adam's Fair Work Commission, the commission is likely to be fairly cautious.

([02:06:07](#)):

The other speakers, to me it was rather sad that we looked and saw that voices at work weren't being treated all that well. That there's high levels of gender pay gap as Dr. Anna tells us. That is Dr. Anna got two, Dr. Annas, Dr. Anna Cody tells us quite rightly, and it hasn't moved, reminds me of women's work is rarely if ever done by men. And isn't that the truth in our society? And we need to think more about women's voices. We need to think more as the other Doctor Anna tells us about migrant voices in relation to neurodiversity. And some of the questions that President Hatcher raised with Judy Neurodiversity is a broad range of people and some will come within the broader definitions of disability. But there's an interesting issue for those who have neurodiverse aspects and many of my sisters and brothers with disabilities that are not apparent.

([02:07:13](#)):

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Sadly, mine's apparent and it's very easy to see. But the big issue is what do you say to your employer? Should you disclose your disability or neurodiversity in good workplaces? You can. But I still know people with disabilities, particularly those with low vision, who tell me they'd be scared to tell their employer. So in the area of neurodiversity and disability, we would like to see greater voices at work. This debate has given me a lot of things to think about. I want to thank the speakers. I want to thank James Fleming, our executive director and speakers. And I also want to thank, and I'll turn it over now to Michael Harma, who really is the brainchild behind a lot of this. Thank you, Michael.

Michael Harmer, AIER ([02:08:08](#)):

Thank you all. Well, we've heard a lot of different voices expressing a lot of different views tonight, some with which you may have agreed, many with, which you may have disagreed, but all of which warrant your respect for they all serve to inform just as to what may be the optimal approach to workplace relations in this country. And it's the aim of the Institute of Employment Rights to foster debate and different perspectives to inform reform in this country. In that context, I'd like to thank President Hatcher for his brilliant and incisive moderation of the debate. Thought his questioning was wonderful and perhaps calls for a special round of applause if that's not inappropriate. Could I also thank our wonderful panel of speakers and our special speakers as well? Could I thank James Flynn, our executive director, Jane Douglas, our own Jane Kan, Keith Harvey, who put in countless hours of work to pull together this debate again this year. Thanks to all of you who have turned up and please join us in the after party if you're here present. And thanks to all of you online who have joined us for another wonderful debate. Lots of food for thought. All the best. Thank you. Bye.

End