



Australian Government

Australian Government response to the

**SENATE FINANCE AND PUBLIC ADMINISTRATION
REFERENCES COMMITTEE REPORT:**

**GENDER SEGREGATION IN THE WORKPLACE AND ITS
IMPACT ON WOMEN'S ECONOMIC EQUALITY**

July 2018

Introduction

The Senate Inquiry into gender segregation in the workplace (the Inquiry) was conducted by the Senate Finance and Public Administration References Committee (the Committee). The aim of the Inquiry was to identify and address the causes of gender segregation in the workplace and its impact on women's economic equality. On 7 June 2017, the Committee delivered its final report *Gender segregation in the workplace and its impact on women's economic equality* (the Report).

The Report made nine recommendations intended to address gendered patterns of work and the relationship to pay equity. The Report found that workplace gender segregation in Australia is high by international standards and is heavily influenced by systemic factors such as caring responsibilities and the availability of flexible work, along with expectations about traditional gender roles.

The Australian Government is committed to supporting women in the workforce by ensuring workplace diversity and flexibility, flexible and affordable child care, increasing the incentives for women to maintain a connection with the workforce, and supporting more women into the jobs of the future.

The Government notes that the issue of workplace gender segregation is complex and a multi-faceted issue and, like the gender pay gap, is not caused by any one factor. Several important achievements have been made that deliver significant outcomes for Australian women and contribute to addressing women's economic equality.

Towards 2025: An Australian Government strategy to boost women's workforce participation (the Strategy), released on 6 July 2017, lays out the Government's roadmap to meet the 2014 G20 target of reducing the gap in participation rates between women and men (aged 15-64) by 25 per cent by 2025. Australia is on track to meet this goal. In the Strategy, the Government has identified five areas which require further action over the next decade: ensuring affordable, accessible and flexible child care; improving workplace diversity and flexibility, supporting women to innovate, succeed as entrepreneurs and thrive in jobs of the future, strengthening women's economic security; and enhancing financial incentives to work. It also details measures the Government is taking to address the factors that drive gender pay inequity in Australia.

The Government thanks the Committee and all those assisting the Inquiry for their contributions to enhancing women's workforce participation and gender pay equity.

Recommendation 1 (paragraphs 6.13 – 6.14)

The committee recommends that the Office for Women in the Department of the Prime Minister and Cabinet lead the development and implementation of national policy framework to achieve gender pay equity in Australia. The framework should set a pay equity target date, provide an advisory structure to guide implementation, provide a roadmap for achieving pay equity in Australia, address segregation in Australian workplaces, and draw on measures in Australia's public and private sectors and in comparable overseas jurisdictions.

The national policy framework to achieve pay equity should coordinate efforts across agencies of government to address the factors that adversely affect women's workforce participation and gender segregation, including:

- reforms to flexible work provisions that will increase access for men and women, and make provision for employees to appeal decisions;
- an extension to the period of PPL and new provisions for the payment of superannuation guarantee during PPL;
- improved access to affordable high quality early childhood education and care; and
- recognition of career paths and qualifications for feminised industries, particularly the care industry.

The Government notes this recommendation.

The gender pay gap is moving in the right direction, falling over the last twelve months to 15.3 per cent. Concurrently women's workforce participation has been rising since late 2016, and as at May 2018 is 60.4 per cent (women aged 15 years and over).

In order to support continued progress in women's economic security the Australian Government released *Towards 2025: An Australian Government Strategy to Boost Women's Workforce Participation* on 6 July 2017. The Strategy highlights the Government's strong record of supporting women in the workforce and sets out the Government's roadmap for continuing to boost women's workforce participation. It details measures the Government is taking to address the factors that drive gender pay inequity in Australia, including measures on flexible work and paid parental leave. Also as noted in the Strategy, it is estimated the Government's new child care package will encourage around 230,000 families to increase their workforce participation.

The Strategy notes the Government's commitments in the action areas of: child care, workplace diversity and flexibility, jobs of the future (including in STEM), economic security, and financial incentives and sets out key actions for 2017-2018 in these areas. The Strategy and its first annual Implementation Plan is at <http://womensworkforceparticipation.pmc.gov.au/>

Recommendation 2 (paragraph 6.23)

The committee recommends that the *Fair Work Act 2009* be amended to improve its capacity to address equal remuneration, including:

- introducing gender pay equity as an overall object of the Act; and
- the provision of guidance for both the Commission and applicant parties on making and applying for orders of equal remuneration. Such guidance could draw on Principles previously adopted in NSW and Queensland jurisdictions, including:
 - requiring that consideration of orders make reference to historical and contemporary gender-based undervaluation;
 - suggesting the steps required by applicants to demonstrate that undervaluation was gendered or had a gender-associated cause; and
 - clarifying that applications may be made without the need for a direct male comparator to establish undervaluation;
- clarifying that applications may be made for equal remuneration orders and work value claims simultaneously; and
- clarifying the definition of remuneration to include recompense or reward for services rendered, including non-cash benefits.

The Government notes this recommendation.

The *Fair Work Act 2009* (Fair Work Act) includes the objective of equal remuneration for work of equal or comparable value as part of the principles relating to the ‘safety net’ of minimum wages and conditions. The Fair Work Act also includes a specific provision for the making of Equal Remuneration Orders. Australia’s legislative framework provides employees with a suite of protections against sex discrimination in the workplace.

Both the 2012 Fair Work Act Review and the 2015 Productivity Commission inquiry into the workplace relations framework did not make any recommendations in relation to the equal remuneration provisions of the current legislation.

Since 2013, the independent Fair Work Commission (FWC) has been considering applications by unions for Equal Remuneration Orders to increase the wages received by child care workers and early childhood teachers.

As part of this process, in 2015, the FWC handed down a decision on legal and conceptual issues relating to the equal remuneration framework and:

- declined to make guiding principles,
- determined that the definition of remuneration is not confined to wages or salary, and includes all other monetary and non-monetary compensation paid as consideration for service under an employment contract,

- considered the capacity for the applicants to pursue claims for increased rates of pay in a modern award for gender-related ‘work value’ reasons, which may constitute an ‘alternative remedy’ such that the provisions preventing multiple actions (s. 721 and s. 724 of the Fair Work Act) may apply to avoid duplication and ensure the efficient running of proceedings, and
- determined that applicants must establish the jurisdictional prerequisite in order for an equal remuneration order to be made. These are:
 1. two workers or groups of workers do work of equal or comparable value;
 2. these two workers or groups of workers are male and female; and
 3. they are not paid the same.

On 6 February 2018, a Full Bench of the FWC determined that the equal remuneration order application by United Voice and the Australian Education Union for child care workers and early childhood teachers did not meet the first requirement and dismissed the application. The FWC did not accept the unions’ submission that a 2005 decision of the Australian Industrial Relations Commission concerning award rates of pay conclusively established the equality or comparability of work value between manufacturing workers and child care workers.

In its reasons for its decision, the FWC made negative observations about the way in which the unions had chosen to put forward the case: "lest it be said that in light of this outcome the system for the achievement of equal remuneration established by the Fair Work Act is ineffective":

The FWC is still considering a separate equal remuneration order application for early childhood teachers by the Independent Education Union.

Recommendation 3 (paragraph 6.24)

The committee further recommends government conduct a comprehensive consultation process with expert stakeholders to achieve these reforms and define any others needed to the Act to achieve pay equity for Australian women.

The Government notes this recommendation.

In 2014, a consultation process involving a wide range of stakeholders was undertaken on the reporting requirements under the *Workplace Gender Equality Act 2012*, including reporting on matters relating to equal remuneration between women and men. The process involved public submissions, face to face consultations, and an online survey. There are a range of mechanisms in place to support ongoing consultation with expert stakeholders on issues relating to gender equality including gender pay equity. These include:

- A Data Consultation Group convened by the Workplace Gender Equality Agency (WGEA) to consult with stakeholders on issues relating to its data

collection function. WGEA also consults widely with business and gender equality experts on current and emerging gender equality challenges, through regular forums, surveys and research initiatives.

- A Gender Statistics Advisory Group convened twice yearly by the Australian Bureau of Statistics (ABS) to consult with stakeholders in government, academia and women's group representatives on the compilation of its Gender Indicators Australia publication.
- Six National Women's Alliances to which the Office for Women provides funding to enable the views of diverse groups of women to be heard by Government. Each Alliance has extensive networks which help inform the Government's policies on women's economic security, safety, workforce participation and leadership.

Recommendation 4 (paragraph 6.28)

The Pay Equity Unit (PEU) was established as part of the Fair Work Commission to undertake pay equity related research and provide information to inform matters relating to pay equity. The committee recommends that the government:

- restore and protect the budget of the PEU;
- investigate the provision of enhanced advisory functions for the PEU via an expert Pay Equity Panel, to undertake research into pay equity matters and provide recommendations for consideration by a Full Bench of the Fair Work Commission; and
- conduct a review of alternative means of making equal remuneration orders, such as conciliation via the Pay Equity Panel, with a view to achieving more timely resolution of equal remuneration applications.

The Government does not support this recommendation.

The Fair Work Act establishes the FWC as the relevant body to exercise functions in relation to equal remuneration matters, including making equal remuneration orders. The FWC is required to perform its functions and exercise its powers in a manner that is quick, informal and avoids unnecessary technicalities. The FWC employs research staff to carry out a range of research activities to support the FWC in fulfilling its functions, including in relation to equal remuneration matters. The FWC's resources are directed to undertake activities relevant to the matters before it and this includes providing relevant support in relation to equal remuneration matters.

Recommendation 5 (paragraph 6.32)

The committee recommends that the Department of Education and Training update the National Career Development Strategy and the Australian Blueprint for Career Development to address the need for gender sensitive career guidance and counselling in all Australian schools and training institutions. The strategy should:

- recognise that women and men may respond differently to information about occupations, industries and further education;
- provide mixed gender career role models, mentors and experiences, with particular sensitivity to addressing gender segregation; and
- offer guidelines for qualifications and continuing professional development (CPD) for career guidance professionals.

The Government supports this recommendation in principle.

In the Quality Schools, Quality Outcomes approach to schools reform, the Government has committed to the development of a new career education strategy. This recommendation will be further considered as part of the new career education strategy.

Recommendation 6 (paragraph 6.33)

The committee recommends that the Department of Education and Training undertake a national evaluation of all programs and initiatives associated with increasing numbers of girls in STEM education, to provide benchmark data and best practice guidelines.

The Government supports this recommendation in principle.

Under the 'Inspiring all Australians in Digital Literacy and STEM' measure of the National Innovation and Science Agenda the Education Portfolio is responsible for administering over \$64 million in initiatives to improve the teaching and learning of STEM in our childcare centres and schools. A focus of these initiatives is increasing the engagement of underrepresented groups including girls. Each of these initiatives has an evaluation component to inform best practice. The Department of Education and Training will consolidate the information obtained on girls in STEM through these evaluations.

Recommendation 7 (paragraph 6.38)

The committee recommends that the government conduct a review of the recent initiative in the United Kingdom on Gender Pay Gap Reporting within two years of the program's implementation.

The Government notes this recommendation.

As part of its legislative function to promote gender equality, WGEA continues to examine the developments in international gender pay gap reporting schemes,

including developments in the United Kingdom. The WGEA fact sheet, International Gender Reporting Schemes, compares international schemes and the outcome on each country's gender pay gap and was updated in January 2018.

Recommendation 8 (paragraph 6.39)

The committee recommends that the government conduct a review of labour force data with particular attention to job classifications used by the Australian Bureau of Statistics and the integration of other available datasets. This review should engage businesses, WGEA, unions and academics.

The Government does not support this recommendation.

The labour force survey, including job classification, is conducted consistent with international standards. The Government's Data Integration Partnership announced in the 2017-18 Budget will provide opportunities for integrating datasets to inform gender reporting.

Recommendation 9 paragraph 6.40

The committee recommends that the ABS Time Use study recommence on a regular basis.

The Government notes this recommendation.

Recognising the value of time use data in providing information on men and women's economic participation in and outside of work, the ABS prioritises its statistical program to maximise public value and requires external partnerships and resources to develop and deliver options for a Time Use Survey.