



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON EMPLOYMENT AND
WORKPLACE RELATIONS

Reference: Pay equity and increasing female participation in the workforce

THURSDAY, 10 SEPTEMBER 2009

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON EMPLOYMENT AND WORKPLACE RELATIONS
Thursday, 10 September 2009

Members: Ms Jackson (*Chair*), Mr Haase (*Deputy Chair*), Ms Bird, Mr Hayes, Mr Keenan, Mr Neumann, Mr Perrett, Mr Ramsey, Dr Southcott and Mr Symon

Members in attendance: Ms Jackson, Mr Perrett, Mr Ramsey and Mr Symon

Terms of reference for the inquiry:

To inquire into and report on:

The causes of any potential disadvantages in relation to women's participation in the workforce including, but not limited to:

- The adequacy of current data to reliably monitor employment changes that may impact on pay equity issues;
- The need for education and information among employers, employees and trade unions in relation to pay equity issues;
- Current structural arrangements in the negotiation of wages that may impact disproportionately on women;
- The adequacy of recent and current equal remuneration provisions in state and federal workplace relations legislation;
- The adequacy of current arrangements to ensure fair access to training and promotion for women who have taken maternity leave and/or returned to work part time and/or sought flexible work hours; and
- The need for further legislative reform to address pay equity in Australia.

WITNESSES

**GALLAGHER, Mr Philip, PSM, Manager, Retirement and Intergenerational Modelling Unit,
Department of the Treasury 1**

**LEGGETT, Mr Christopher, Senior Adviser, Personal and Retirement Income Division,
Department of the Treasury 1**

**LEJINS, Ms Erica Noble, Senior Adviser, Personal and Retirement Income Division,
Department of the Treasury 1**

Committee met at 11.33 am

GALLAGHER, Mr Philip, PSM, Manager, Retirement and Intergenerational Modelling Unit, Department of the Treasury

LEGGETT, Mr Christopher, Senior Adviser, Personal and Retirement Income Division, Department of the Treasury

LEJINS, Ms Erica Noble, Senior Adviser, Personal and Retirement Income Division, Department of the Treasury

CHAIR (Ms Jackson)—This is the 30th public hearing for the committee's inquiry into pay equity and associated issues relating to increasing female participation in the workforce. I welcome the representatives of Treasury who are here with us today. We have received correspondence from the Treasurer in response to a few questions that we asked. Obviously, we want to discuss that with you, but before we do that, are you keen to make an opening statement or any additional submission?

Mr Gallagher—No.

CHAIR—Of the questions we have in particular and, hopefully, these will not be confusing—I managed to confuse myself—we will start on the superannuation question first. You have provided us with some figures about the net cost to employers of removing the \$450 per month minimum superannuation guarantee threshold. We had a look at the ABS statistics for the number of people earning less than \$450 a month. The ABS has that at 369,200; that excludes employees who are over 70 years of age, or who are between 15 and 18, consistent with the requirements of the superannuation guarantee charge. ABS advised us that for all Australians earning under \$450 a month it is total weekly earnings of approximately \$25,105,600. Nine per cent of that would be around \$2¼ million, and if we take that out to an annual figure for the purposes of comparison with your figures, accepting that my maths is not perfect—Mike Symons is a lot better at it—it is around \$117 million.

Your figures are \$210 million in 2010-11, assuming a 1 July operative date, and \$220 million the following year and—I am not sure why—are considered to be \$220 million the year after that as well. I want your view on that. It seems to us that discrepancy is about the fact that we have a number of employees who are working for multiple employers, so their monthly earnings are greater than \$450 a month, but not with the individual employers with whom they work. Is that your explanation of that discrepancy?

Mr Gallagher—I think the thing about the ABS survey is that it is based on the labour force survey and therefore it is not a comprehensive survey. The sample design of that means it is not comprehensive, and for small populations it will have significant sampling errors. Although I would not say that 369,000 people is a small population I am a bit concerned that it might be an underestimate.

We have done this using tax office data—well, actually not us; we have got the Australian Taxation Office to do it because they can do it. The advantage of the tax office data is that it is comprehensive—it covers everyone who is paying tax and is inside the taxation net. The tax

office has taken the employer returns in terms of how much they are paying each worker and they have matched that to the member contribution statement on superannuation. What they have looked for is a set of employees who are earning less than \$450 a month or, if they are working less than a month, who are earning less than \$15 a day. The tax office has then looked to see whether or not they have any superannuation recorded.

If anything, the tax office based estimates could be underestimates because where a person has multiple jobs—they might have three jobs and they are getting superannuation in respect of one of them but you do not know which one—essentially the tax office has said, ‘We can’t tell that a person is getting super for one job and not for the other two’. So they have left those people out in the case of multiple casual jobs and things like that. They have also left out people on the basis that they are aged 50 or 70 and are potentially salary sacrificing as opposed to not receiving superannuation guarantee. In other words, they get to the apparent number of less than \$450 a month from salary sacrificing. So I am fairly confident that the scale of the tax office estimate is correct, and if anything it could be a little higher than that.

CHAIR—It is your view that it is genuinely reflecting employees earning less than \$450 a month?

Mr Gallagher—Yes.

CHAIR—So it does not capture at all the group who, to make up a livable wage, may have multiple part-time jobs?

Mr Gallagher—I think that where they are getting superannuation for one job but not for the others they have potentially been left out because they have been treated as though they are getting superannuation for each of the small jobs that they have. I am saying that if anything there is a slight risk on the tax office estimate that it is an underestimate rather than an overestimate. I note that the direction of your question is on the basis of the ABS numbers. I would have to look more carefully at the design of the employee earnings and benefits and the trade union membership, and survey that to form a view. This is a self-report survey—it is not an employer based survey—and it was done at a particular point in time, the reference month is August 2008, whereas the tax office will of course have captured people working in any month and earning less than \$450 in that month. It is quite likely that there is an increase in seasonal work around Christmas, as we all know, and that the ABS survey will not pick that up.

CHAIR—Thank you for that. One of the things that motivated the committee’s questions to Treasury was evidence of a reasonable number of people, especially women, working in multiple part-time jobs. The second issue is evidence that we received about the disparity of respective retirement incomes for women and the growing problem for them in terms of that. From my point of view it was about trying to work out, especially given the clearing house for everything we are doing to make paying superannuation easier for employers, rather than leaving those people dependent on a pension safety net at age 65 or 67, whether there may be an alternative way to assist them to improve their superannuation.

Mr Gallagher—I think it would be additional; if people have substantial part-time work they are highly likely to be full-rate pensioners. That population, which has an income test which cuts out at about \$65,000, whenever we analyse them are all likely to end up as full-rate pensioners,

so there are not a lot of pension savings to be gained in this, because of the nature of the pension income test. The thing that it is about and that it has always been about is better income in retirement and having a bit to set yourself up for retirement. It is very important that when you retire you can fix up your household assets—get a new fridge, fix up your car and do whatever else is necessary for retirement—and for people who have been in low-income employment it is useful that they have that additional amount of money to help with those tasks at that time.

CHAIR—Yet increasingly in our labour market—you want a responsive, flexible labour market—we are seeing more people working multiple part-time jobs. That is a trend you would have to accept. Isn't it potentially going to undermine that objective or aim for a decent retirement income through superannuation if we are going to miss this group of people?

Mr PERRETT—Because they will not pay a dollar into their super? Is that the proposition?

CHAIR—There would be no employer contribution for super.

Mr Gallagher—One of the issues here is to what extent this is a temporary phenomenon in your life. When you look at surveys such as Household, Income and Labour Dynamics in Australia—the HILDA survey—you see that people do have a salary progression. Even though they may start off in low-income, part-time or casual jobs—and often it is young people who have these sorts of jobs—they move into more substantial jobs as their career progresses.

CHAIR—Do you have a gender differential on that?

Mr Gallagher—No, I do not, but we could look.

CHAIR—Because I would have to say that on the evidence we have received I cannot for a moment believe that men and women have a similar kind of career progression. There may be some commonality, but every bit of evidence that has been presented to us is contrary to that notion.

Mr Gallagher—My unit does the women in the labour force projections which underline the intergenerational report, and what we found is that women are far more likely to be working in part-time and casual jobs and that that is a continuum feature of the projections. In fact, the expansion of female labour force participation is very strongly in part-time jobs.

CHAIR—Yes.

Mr HAASE—I am very interested in pursuing the minutiae of the information you have. As the chair has mentioned already, we are confronted with this inequity in which women work part-time or casual work and at the end of their working life have not amassed superannuation. That is being given to us as evidence of this gender based inequity in income during working life. We are therefore looking very closely at the justification for changing this in order to encourage women to get back into the workforce by heralding the fact that they will be able, even though they may be working a number of part-time or casual jobs—not in addition to a permanent job but exclusively casual and multiple part-time jobs—to have employers make a contribution to their retirement superannuation. That is our collective wish list as a committee. I am not speaking independently. We are looking for your close advice on the best stats that reflect

how many people there are in that situation. We are not concerned primarily with those who are working a full-time job and additional casual work. I think you have already explained that; your statistics do not pick up on that, because they have some contribution being made in relation to superannuation.

I guess I am asking for the stats, whatever they may be—they may be this set or others that you provide in the future—that clearly show us just those who are working and earning in excess of \$450 per month but make no super contribution because not one of those jobs earns in excess of \$450 per month. It is not meant to be a bright light of scrutiny. We want your assistance here.

Mr Gallagher—Using the salary data, the tax office was able to look at each individual job and therefore rule people in as being under \$450 in each of the jobs that they had. What they could not tell was, if there had been a superannuation contribution, which job it had come from. I can go back and ask the tax office to go through those numbers. One of the things that strikes me about the costing I have is that I do not have the number of people. As soon as you said the figure 369,000 I thought: how many people are in this one? One of the things I clearly need to do is to go back and find the number of people underlying this analysis, because that is not data that has been provided by the tax office to me. I will attempt to get numbers in terms of the multiple jobs problem.

I think the other thing we can do for the committee is analyse the survey of employment arrangements, retirement and superannuation and look at people who are later in their careers who appear to be in part-time casual jobs and who have very low superannuation accumulations. It is not clear, however, that dealing with the \$450 threshold issue will necessarily help the group. What we know in Treasury is that, although the legal incidence of these payments may be on employers, the economic incidence of the superannuation guarantee is on employees.

If you look at labour productivity increases during the 1990s and at the rate of real wage increases in the 1990s, there is a substantial gap between the two, which appears to be the funding of the SG out of what would otherwise have been increases in cash wages. As the chair will know, that was always the concept behind award super—productivity super as it was called at the time—and security in retirement in 1992. Paul Keating acknowledged that the costs would be incident on the workers, and the issue therefore for a committee looking at female participation in the labour force is whether increasing the cost of their labour will in fact increase participation by people in the group, given that the cost will be incident on them and that employers will think: ‘This is a higher cost person. How do I want to structure my affairs?’ It is not clear that going down this path will necessarily increase female participation.

Mr HAASE—Could I get your assurance, Phil, that you believe that you fully comprehend where we are heading in the data we are looking for now, just so that we can avoid another step in the process.

Mr Gallagher—As I said, I have not been involved up to now in the considerations of the committee, but I can see that we can improve the information you have been given. Obviously, we have been asked specific questions and we have given specific responses, but we can help you a bit more generally with what you want to know.

Mr SYMON—On the last page of your submission there is a note about costings. I am wondering if that applies only to that last section or whether it applies to all of them. It is not particularly clear to me. You can see down the bottom that it says: ‘Note on above costings: the above costings are of a low reliability and assume a start date of 1 July 2010 based on ATO data for 2007-08’.

Mr Gallagher—Firstly, I think that there is undue modesty here. As costings go—

CHAIR—No!

Mr Gallagher—Although there are uncertainties in this costing process, I am quite confident of the scale of both sets of numbers. As to whether it is \$37 million or \$35 million there may be some uncertainty.

Mr SYMON—You may be missing my point. I am just asking if that particular line applies to the rest of the tables in the document.

Mr Gallagher—The full costing advice from the tax office says that about the earlier costing as well.

Mr SYMON—Okay.

Mr Gallagher—It seems to me that, if anything, it is far easier to identify people over the age of 70 years who have no superannuation contributions. It is a straightforward task when you have access to the data that the tax office has access to.

Mr SYMON—Okay. That was the easy question. Here is the harder one. In relation to your submission on superannuation and response to our request on that, you have come back with a response from the Henry review. The bit that I am concerned with is that one of the issues as to why super should not be paid for those under \$450 a month is the issue of costs to the employer. It says here:

These costs include administration costs such as, opening an account, arranging for the payment to be made, and the retention of records for compliance purposes.

I would suggest that most of those things have to be done already for an employee, other than opening a super account; certainly with an industry fund that would not be a cost. The payment to be made is, I suppose, a transfer electronically, as many other things are these days. To me that would seem to be a very small cost for an employer, and with many pay systems that is an in-built function. Certainly with most of the employers I have worked for over the years that is part of the pay system; it is not an extra that has to be done afterwards.

Mr Gallagher—Yes. I think the concern here is about small business hiring casual labour as opposed to standing business. We know from the administration of the superannuation guarantee that there are a number of businesses—I think one of them would be Myers—where the superannuation guarantee is paid irrespective of what you get in a month because it actually makes their pay system easier to manage. So I think that for a large employer that is definitely the case and the issue here might be small, casual employment.

CHAIR—You could do a software programming change in MYOB, which is what most small businesses use, and it would not be a problem, surely. It is already calculating percentages for various things—deductions.

Mr Gallagher—I am not expert in that sort of software.

Mr SYMON—I have one more question, and it relates to the same section. That was given as one reason why it would be impractical to pay super for those under \$450 a month. What were the other reasons that were put forward that outweighed, I suppose, the equity of someone earning under \$450 a month getting super for the time they work?

Ms Lejins—I do not think we are able to comment on it. This is the information the panel was given as to what their considerations were, so we really are not able to comment on what other considerations they may have had.

Mr SYMON—Okay, thank you.

Mr Gallagher—This has been an issue since the SG was created in 1992. I have been in charge of retirement income modelling in Treasury since 1993. What we know is that, as time passes, this \$450 threshold is excluding fewer and fewer people. Back in 1992 there was a considerable degree of discussion between the ACTU and the government on the issue, and that is no secret. The issue here is to balance the representations from employers with the representations from those representing workers.

Mr SYMON—There is one last thing, if I may. In 1992 there would have been a far smaller percentage of the workforce employed in part-time or casual positions. Has that actually swung it back the other way?

Mr Gallagher—That is true, and I must admit I would not know the balance of workers earning under \$450. I do not know if you could work it out. Certainly, getting tax data back that far will be a problem, because the tax files are so large that they are archived rather than available online, and the tax office will not like us if we go and say, ‘Run everything back to 1992 and tell us what you get.’ So it might be a bit difficult to answer that question empirically.

CHAIR—Mr Ramsey, do you have any questions?

Mr RAMSEY—I think most of the ground has been covered, but, regarding the \$450 amount, I take it the review does not focus at all on the appropriateness of that amount and on the cost of running superannuation schemes as opposed to what might be generated. Was that part of the terms of reference, as far as you know? The threshold is \$450 a month and you get a \$40 payment. I do not know what it costs to run a superannuation account over a monthly or 12-monthly period—even though I should know because I have one that loses money all the time! It must be getting somewhere, in the law of diminishing returns—

Mr Gallagher—It is not a feature of the terms of reference. The Henry review is a very broad review of taxation and transfer arrangements in Australia—payments to individuals. I do not think the \$450 threshold features specifically. It has been included because it is an element of the superannuation system. The committee has a number of people on it, including Dr Ken Henry,

the Secretary to the Treasury; Greg Smith from the Australian Catholic University—he used to be in Treasury; and Jeff Harmer from FaHCSIA. But, importantly, the committee also has Heather Ridout. I have attended committee meetings and, as you might expect, Heather is one of the people on the committee who thinks about costs to employers. That would come as no surprise to anyone. The governance arrangement is that they need to largely agree on their recommendations and their approaches in the report. It needs to be agreed between the five members of the panel.

CHAIR—There is another woman on the committee, isn't there? Or is Ms Ridout the only one?

Mr Leggett—She would be the only one, I think. John Piggott is the other member.

Mr Gallagher—John Piggott is the other representative, and John is essentially—

CHAIR—At least I have a basis upon which I can criticise all of their findings, haven't I!

Mr HAASE—No, none whatsoever. This is a little removed from our previous discussion, but, given that you are here today, I would like you to remind us what the arrangements are by regulation for those that are working in this country on temporary visas in relation to the refund of the superannuation payments made by their employer. I will give you a scenario: a holiday-making workers visa recipient works in the Ord Valley for three months picking watermelons. They earn a sufficient amount that superannuation is paid. What happens after that when they go home?

Ms Lejins—When they permanently depart Australia they can claim back their superannuation. That is subject to a departing Australia tax. If they do not claim back their superannuation, having permanently departed Australia, it is then paid over to the ATO as unclaimed moneys. It is possible for them to claim it back at a later stage.

Mr HAASE—Is there any sort of maximum time delay?

CHAIR—The statute of limitations or something.

Ms Lejins—I would need to take that on notice.

Mr HAASE—That is fine. What is the departure tax? Is it a percentage or a fee?

Ms Lejins—It is a percentage, and it basically equates to the top marginal tax rate.

Mr Gallagher—In total.

Ms Lejins—In total, having regard to the fact that the contributions would have been subject to a 15 per cent contributions tax on entry to the fund.

Mr Gallagher—The departing Australia superannuation tax is 30 per cent. So, if you take your money when you leave the country, it is subject to a 30 per cent tax rate.

Mr HAASE—Your written response to our questions indicates that you are conscious of the additional costs to employers taking on casual employees with a monthly income of less than \$450. If they are required to pay the superannuation guarantee, there is an administrative cost. That was contained in your answer. Are you able to elaborate on that and indicate any known sums as to the administrative costs of running an employee?

Mr Gallagher—In terms of the taxation data, the cost of administration merely occurs as a deduction from income for the superannuation fund. It is only available at the fund level, not at the individual level, and it does not tell us what the cost to the employer was. The cost to the employer will be mixed in with other costs of employment deductions that the employer may have. I am not aware of any separation. The Cooper review into administrative arrangements in superannuation may be able to tease out issues around fees and charges, but I do not know whether even they will be going into employer costs.

Mr HAASE—To be quite clear, the \$450 per month is actual; it is not annualised or any such thing. It has to be the actual month we are talking about.

Mr Gallagher—Yes.

CHAIR—In terms of the superannuation, I understand you are going to provide us with the actual number of employees behind your costings?

Mr Gallagher—We will get back to you the number of employees behind the costings.

CHAIR—I guess we could work this out, but perhaps it would be better to ask you to provide the estimated mean weekly earnings. So I have asked you for the number of employees and the estimated mean weekly earnings. I assume you will also include the estimated total wage of those people earning less than \$450. Just to pick up on an earlier question from Mike, is it possible in the costings to get some estimation of how much of the costs of employers would go to the cost of administration versus payments to employees? Is that breakdown possible?

Mr Gallagher—I suspect it would be difficult for us to get any analysis of the marginal cost to employers of adding someone to—

CHAIR—Presumably there is a formula that Treasury applies to ascertain an estimated cost to the employer, because we have that figure here—or do you think that is just done on the basis that nine per cent of wages is going to cost—

Mr Gallagher—The only costing in here is nine per cent of wages.

Mr RAMSEY—Madam Chair, are you talking about the compliance cost to employers or the value of the superannuation to the employee, like nine per cent of \$68?

CHAIR—I thought the figures we had been given included—and obviously I am wrong—some notional estimate of the administrative and compliance costs of the employers as well as the straight wage cost.

Mr Gallagher—There are no details in here of any estimate of employer costs, in terms of costs raised by the tax review panel in their report and their considerations as opposed to costs raised by the ATO in its advice on the cost.

CHAIR—I will now move onto fringe benefits tax. In terms of where the committee was coming from, we were told of employers who may want to provide childcare services at work as part of attracting or maintaining women's participation in the workforce, but there was a disincentive in the system because of the fringe benefits tax, which is ironic because you could pay someone more money to cover their child care and not incur a disincentive, or you could actually support the childcare centre down the road without it causing a fringe benefits tax problem. It was more of an issue for women working in rural and remote areas and for employers of people in rural and remote areas who do not have the childcare centre down the road that could be used. I understand from this that you have absolutely no way of assessing what proportion, if any, is the cost of exempting child care in rural areas.

Mr Gallagher—In terms of what there is now and what people are doing, this document is the fringe benefits tax return that I have printed off the tax office website. The relevant part of it in terms of what information we have in detail is on the back of the document. If you look at the back you will there is no information for fringe benefits tax collected in terms of use of child care.

CHAIR—You should put some of those women onto that.

Mr Gallagher—There are two situations we need to focus on here, which have probably been of concern to the committee before. One is where child care is on employer premises. Where child care is on employer premises it is fringe benefits tax exempt.

CHAIR—I did not know that.

Mr Gallagher—Maybe in previous committees that I gave evidence to a couple of years ago this was a big issue. The consequence of it being exempt is that it is not actually recorded because it is not taxable. The tax office wants to record stuff that is taxable, not stuff that is not taxable. We do not know about that one because it is exempt, but it is possible. Where an employer could give a childcare fringe benefit tax to pay fees down the road, there is no particular incentive to do so. There is a very significant incentive in terms of the childcare tax rebate, the childcare benefit, for the person to have it on their own account.

Mr Leggett—That goes for the exempt side as well, anyway. Since the childcare rebate and childcare benefit come into place in the 50 per cent rebate, the childcare rebate and benefit are far more generous than accessing the FBT exemptions. As soon as you access FBT exemptions you are not entitled to those two things so as to prevent double dipping. In fact to get a benefit from the FBT rebate you would need to be earning more than \$180,000 a year and incurring more than \$16,500 of child care per child, which basically means it is a very small group of people who would benefit from the FBT exemption. Most people would use the CCB or the CCR.

CHAIR—Provided they have an appropriate childcare service which they are able to claim childcare benefit for. Going back to regional and rural people, that is often not the situation there.

Mr Leggett—That is possible, but the tax system, of course, does not drive that; that is a FaHCSIA policy.

CHAIR—It drives some things though. You would be surprised what it drives.

Mr Leggett—I have no doubt.

Mr Gallagher—We all salary sacrifice cars.

CHAIR—Thank you very much for coming along today. We are on a really tight time frame for report drafting, and I cannot believe we did not get you in over a year ago to start some of these questions. I wonder if it is possible for you to provide that additional information ASAP and hopefully by 17 September—

Mr Gallagher—That's close!

CHAIR—You notice I tried to slip that in.

Mr Gallagher—Will we have the *Hansard* by then?

Mr HAASE—That is very close, Chair.

CHAIR—I am trying to do as requested by my secretariat. It may be that we can provide a bit more flexibility than that.

Mr HAASE—I have just heard: the *Hansard* will be here tomorrow.

CHAIR—We will have the *Hansard* in the morning. Can I just leave it on the basis that we are on a very tight time frame now for drafting our report, and if you could get to us as soon as possible we would be incredibly grateful, and if you could make Thursday, 17 September, that would be highly desirable. I appreciate that think I am seeking the more precise additional information on numbers.

Resolved (on motion by **Mr Ramsey**):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

Committee adjourned at 12.16 pm