
The Parliament of the Commonwealth of Australia

Making it Fair

Pay equity and associated issues related to increasing female participation in the workforce

House of Representatives
Standing Committee on Employment and Workplace Relations

November 2009
Canberra

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ISBN 978-0-642-79268-6 (Printed version)

ISBN 978-0-642-79269-3 (HTML version)

Printed by Elect Printing, Canberra.

Cover design by Lisa McDonald, Printing and Publishing Office, Department of the House of Representatives, Canberra.

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Foreword

Pay equity or the lack of it was one of the issues that sparked my interest in politics and social justice. As a young woman I was outraged that someone could or would be paid less for their work because of their gender.

It angers me that over 30 years later, despite some progress, this is still the case.

Commissioner Dominica Whelan who chaired the Victorian Government's Pay Equity Working Party in 2004-2005, wrote a paper in 2005 about the future of pay equity in Victoria. Her opening paragraphs ring true today;

"WHERE WE ARE

'In 1972 the Australian Conciliation and Arbitration Commission granted men and women the same minimum wage. In theory, then, women in Australia have finally achieved the right to equal pay. In practice, the principle of 'equal pay for equal work' is still 'abstract justice' rather than 'practical politics'. Many factors, such as the segregation of women into female-only occupations, the application of the principle to the minimum wage and not to over award payments, and discrimination in education and job training, have contributed to the fact that for many women equal pay is just not a reality.

That is the opening paragraph of a paper which I gave to an Australian Political Economy Conference in 1978. In the last 28 years we have defined the causes of wage inequity more precisely. We have measured the gender pay gap against a whole range of variables. We have accounted for the different factors that contribute to the reality that women are still being paid less than men. We have satisfied ourselves that accounting for all those factors discrimination still lies at the root of wage inequality. But in some ways, after the initial gains (the wage gap narrowed by about 17 per cent between 1969 and 1976) we have made little progress in making equal pay a reality for many women."

Sadly, the average industry gender pay gap still stands around 17% today with some industries like finance and insurance at 31.9% and in Western Australia at 35.7% even under boom conditions.

Many of the submissions to the Inquiry highlighted the concern that many Australians are unaware of the existence of a “pay gap” between men and women’s earnings. The Diversity Council of Australia with the Equal Opportunity for Women in the Workplace Agency (“EOWA”) undertook polling research to assess community awareness of pay equity and presented the findings to the Inquiry.

That research found that most Australians do not know what pay equity means but while they were aware that a pay gap between men and women’s earnings exists, did not know what the size of the gap is. Most believe steps should be taken to close the gap between men and women’s earnings when they were made aware.

Based on the submissions we received, I believe there is strong community support for taking action to address gender pay inequity.

Australian women have much to celebrate. They have achieved high public office. Women are Chief Executive Officers, business leaders, community leaders; they are Nobel Laureates, academics; they are Parliamentarians, Local Councillors, sporting legends as well as mothers, sisters and partners.

Australian women have more choices about their lives, their studies, their careers, their families and how they chose to live them than ever before.

However, whilst women hold the offices of Deputy Prime Minister, Governor General and the current Premier of Queensland we have a very long way to go before our parliaments are truly representative of our community. Since Federation, of the 1,059 people elected to the House of Representatives only 77 have been women. Forty of the current 150 members of the House are women – only 26.7 per cent.

In the business sector women represent less than 2 per cent of our CEOs and Chair only 2 per cent of our top 200 ASX companies. Indeed in the 2008 Australian Census of Women's Leadership conducted by the Equal Opportunity for Women in the Workplace Agency, women went backwards on most of the key indicators compared to the 2006 census survey.

The Australian workforce is highly gender segmented, women predominate in 4 or 5 industries and occupations. Women are more likely to be employed in low paying jobs with little or no career pathways. They are more likely to be employed as casuals and part time workers. They are more likely to have interrupted work patterns and breaks in their paid employment.

Women have not fared as well as men in enterprise bargaining or individual contracts. They appear to be employed in workplaces or situations where they have little bargaining power.

Women are more likely to be dependent on pensions as they age because of the great disparity in the accumulation of superannuation and retirement monies compared to men. Women miss out on the opportunity to accumulate superannuation because of interruptions to paid employment for family reasons (to have and care for children) compounded by lower pay.

It was remarkable from the evidence before the Committee how prevalent pay inequity is. It was evident in all industries and it was experienced by working women at all skill levels. Indeed there was evidence of professional women being paid less than their male counterparts for doing the same work in the same firm.

It is also clear from the evidence presented to the Inquiry that the gender pay gap in Australia has grown, especially since 1992. We have gone backwards.

This is not good enough and the time to act is now.

Some will say that we should wait – for what I am not sure, divine intervention? It is 40 years since equal pay was granted by the Australian Conciliation and Arbitration Commission. Haven't Australian women been waiting long enough?

Some will say that it will be costly to government and business to make pay fair, that we can't afford it – I'm not sure how this position can be justified. How can Australian women continue to afford it? It is not alright to let this injustice continue and to become further entrenched. Given the link between productivity and pay equity – how can Australia not afford it?

Some will want to focus on education campaigns promoting community and business awareness of pay inequity without imposing change or offering a mechanism to achieve pay equity. We have had over a decade of precisely that policy approach and the evidence is unequivocal, the pay gap has widened.

From the outset of the Committee's Inquiry we agreed that we needed to go beyond past reports because we wanted substance to our recommendations, to recommend legislative reform if that was required, to use best practise examples that worked and to build on successful initiatives in states, territories and individual workplaces and internationally.

We have heard from many witnesses and received many submissions.

Australia should take a pro-active approach to address the gender pay gap. We need to plan for pay equity and deal with the barriers to women's participation in the workforce. Increasing women's participation in the workforce will lead to increases in productivity for the nation.

The Australian Government's decision to deliver Paid Parental Leave in this year's budget was a welcome reform and will benefit working women and their families. It is one example of a policy reform that will help break down the barriers to greater workforce participation by women.

There was a great deal of evidence presented that went to the situation of women employed in the aged care sector. Whilst the recommendations of this report do not specifically address this industry it is clear that action needs to be taken to improve wages and conditions. The scheme suggested will establish a system that will facilitate fairer outcomes for those whose work is undervalued. I am aware of

the dependence on the Australian government for the funding of this sector. I urge the responsible Ministers (including the Minister for Finance) to look at how we can responsibly increase the funding for wages in this sector.

At the heart of the gender pay gap is the failure to truly value traditional women's work – paid or unpaid.

We do not count women's unpaid work – domestic responsibilities, child rearing or caring in our gross domestic product or major economic indicators. Whether it's cleaning, catering or caring it is essential work. It is critical to the well being of our community.

As humans we value caring and nurturing, we implicitly understand how it affects our well being.

To continue to undervalue women's work is simply not just. It is difficult to think of any other policy equivalent that clearly disadvantages a particular class of Australians that we do not rush to correct.

This report sets out a scheme to act to close the gender pay gap.

It includes proposed amendments to the Fair Work Act 2009, greater powers for the Sex Discrimination Commissioner to act on wage discrimination and the establishment of a specialist Pay Equity Unit within Fair Work Australia with a broad mandate for change.

We have called for change in other policy areas such as the removal of the \$450 per month earnings requirement in compulsory superannuation and the implementation of comprehensive portability of employment entitlements legislation.

We have also recommended that the Australian Government lead by example acting on pay inequity within the Australian Public Service as well as applying pay equity principles in all its administrative approaches.

Finally we acknowledge there are significant gaps in the data available for collection and research into pay equity and other issues affecting women's participation in the workforce. In particular we have recommended the introduction of an Australian Industrial Relations Survey. This improved data is necessary for more effective and strategic policy decision making.

We have avoided creating new obligations for small and medium enterprises as we recognise the burden that red tape has on this sector.

The majority of these recommendations are unanimous. Some are opposed by Opposition Members of the Committee.

For example Opposition members of the Committee have not supported the recommendations for amendments to the Fair Work Act 2009 contained in Chapter 5. It is true that the Fair Work Act does widen the scope for applications to be taken at the federal level for equal pay for work of comparable value. However, the experience of similar provisions in some state Industrial Relations legislation still demonstrate relatively few cases have been dealt with. All cases have been adversarial, lengthy and often costly. A better system is needed and the suggested changes in this Report will address this.

The Minister has also recently announced that the Australian Government will be a participant in an important pay equity test case for employees in the social and community services sector. I applaud this decision.

However I am convinced that an alternative mechanism that allows for a non adversarial consideration of the undervaluing of women's work and a comprehensive scheme to correct undervaluation across industries is more efficient and preferable.

I want to thank the Members of the Committee and especially the Committee Secretariat for their hard work and participation in the Inquiry. It has been a long but worthwhile journey for all of us.

For me, the spark still burns and it burns brighter. I urge the Government to implement the recommendations of the Report and right the wrong of pay inequity.

Ms Sharryn Jackson MP

Chair



Membership of the Committee

Chair Ms Sharryn Jackson MP

Deputy Chair Mr Barry Haase MP

Members Ms Sharon Bird MP Mr Richard Marles MP (until 15/06/09)
Ms Jill Hall (until 18/06/09) Mr Shayne Neumann MP (from 17/6/09)
Mr Luke Hartsuyker MP (until 10/11/08) Mr Graham Perrett MP (from 24/6/09)
Mr Chris Hayes MP Mr Rowan Ramsey MP (from 10/11/08)
Mr Michael Keenan MP (from 10/11/08) Dr Andrew Southcott MP
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Terms of reference

That the Committee 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.



List of abbreviations

ABS	Australian Bureau of Statistics
ACTCOSS	Australian Capital Territory Council of Social Service
ACOSS	Australian Council of Social Service
ACTU	Australian Council of Trade Unions
AEU	Australian Education Union
AFPC	Australian Fair Pay Commission
AHRC	Australian Human Rights Commission (formerly <i>Human Rights and Equal Opportunity Commission</i>)
AIM	Australian Institute of Management
AIRC	Australian Industrial Relations Commission
APS	Australian Public Service
APSC	Australian Public Service Commission
APSED	Australian Public Service Employment Database
ASU	Australian Services Union
ATO	Australian Taxation Office
AUSIT	Australian Institute of Interpreters and Translators

AWA	Australian Workplace Agreement
AWIRS	Australian Workplace Industrial Relations Survey
AWE	Average Weekly Earnings
CALD	Culturally and Linguistically Diverse
CCI	Chamber of Commerce and Industry
CEDAW	Committee on the Elimination of Discrimination Against Women
COAG	Council of Australian Governments
CPSU	Community and Public Sector Union
CPSUFG	Community and Public Sector Union State Public Services Federation Group
DCA	Diversity Council of Australia
DEEWR	Department of Education, Employment and Workplace Relations
DfES	Department for Education and Skills (United Kingdom)
EEBTUM	Employee Earnings, Benefits and Trade Union Membership
EEH	Employee Earnings and Hours
EM	Explanatory Memorandum
EOWA	Equal Opportunity for Women in the Workplace Agency
EOWW Act	<i>Equal Opportunity for Women in the Workplace Act 1999 (Cth)</i>
ERP	Equal Remuneration Principle
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
FECCA	Federation of Ethnic Communities Councils Australia
FSU	Finance Sector Union

FWA	Fair Work Australia
GDP	Gross Domestic Product
GTA	Group Training Australia
HILDA	Household Income and Labour Dynamics in Australia
HREOC	Human Rights and Equal Opportunity Commission (now <i>Australian Human Rights Commission</i>)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDC	Interdepartmental Committee
IEUA	Independent Education Union of Australia
ILO	International Labour Organisation
IRRC	Industrial Relations Research Centre
ITUC	International Trade Union Confederation
KPI	Key Performance Indicator
LFS	Labour Force Survey
LHMU	Liquor, Hospitality and Miscellaneous Union
NAB	National Australia Bank
NOW	New Opportunities for Women
NPEC	National Pay Equity Coalition
NTEU	National Tertiary Education Union
OECD	Organisation for Economic Cooperation and Development
OSHC	Out of School Hours Care
OfW	Office for Women
PFA	Police Federation of Australia

QIRC	Queensland Industrial Relations Commission
QWIRS	Queensland Workplace Industrial Relations Survey
RCSA	Recruitment and Consulting Services Australia
SDA	Sex Discrimination Act
SES	Senior Executive Service
TAFE	Technical and Further Education
UN	United Nations
UWS	University of Western Sydney
WEL	Women's Electoral Lobby
WESKI	Women's Employment Status Key Indicators
WiSER	Women in Social & Economic Research
WWDA	Women with Disabilities Australia



List of recommendations

5 - Industrial relations legislative reforms

Recommendation 1

That for the removal of any doubt, the definition of equal remuneration for work of equal or comparable value in the *Fair Work Act 2009* be supplemented with a signpost note confirming that the concept of equal remuneration includes the valuation of dissimilar work of equal or comparable value.

Recommendation 2

That the *Fair Work Act 2009* be amended to broaden the definition of remuneration to include direct or indirect payments, whether in cash or in kind.

Recommendation 3

That the section 3 of the *Fair Work Act 2009* be amended to state that equal remuneration for men and women employees for work of equal or comparable value is an explicit object of the Act.

Recommendation 4

That the President of Fair Work Australia, by promulgation, enunciate an equal remuneration principle and set out how this principle is to be applied (e.g. work evaluation, comparisons across industries including similar and dissimilar work) in all contexts.

Recommendation 5

That the Government establish a discretionary fund to be administered by the Attorney General for the provision of funding on application for the pursuit of cases in relation to remuneration orders.

Recommendation 6

That Fair Work Australia investigates the feasibility of advisory classification and remuneration benchmarks to provide advice to employees and employers.

Recommendation 7

That s. 156(4) be amended to include:

(d) evidence that the work, skill and responsibility required or the conditions under which the work is done have been historically undervalued on a gender basis.

Recommendation 8

That s. 157 be amended to ensure consistency with s. 156 and include a definition of 'work value reasons' defined as:

... reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:

- (a) the nature of the work;
- (b) the level of skill or responsibility involved in doing the work;
- (c) the conditions under which the work is done [S 156(4)].
- (d) evidence that the work, skill and responsibility required or the conditions under which the work is done have been historically undervalued.

Recommendation 9

That the Government:

- elevate pay equity to be a clear objective of modern awards;
- expand scope of variation and amendment of awards on work value grounds to explicitly include pay equity, applying a gender neutral work valuation' require Fair Work Australia to be satisfied that the award satisfies pay equity criteria.

Recommendation 10

That s. 134 of the *Fair Work Act 2009* be amended so as to require that an award must provide for equal remuneration for men and women employees for work of equal or comparable value.

Recommendation 11

That the Australian Industrial Relations Commission report to the Committee prior to the finalisation of the awards in the awards modernisation process in relation to how pay equity principles have been achieved.

Recommendation 12

That Fair Work Australia report to the Parliament within the annual reporting process on any changes to the awards after 1 January 2010 that may have the potential to impact on pay equity.

Recommendation 13

That s. 65 of the Fair Work Act be amended to require that individual flexibility arrangements are lodged with Fair Work Australia.

Recommendation 14

That the National Employment Standards Division 3 (13) in relation to requests for flexible working arrangements be amended to include all employees.

Recommendation 15

That the *Fair Work Act 2009* be amended:

- to impose a legal obligation on the parties in a negotiation of a single or multi enterprise agreement that the negotiation and the agreement must include bargaining to achieve pay equity as defined by the Act; and
- to require that Fair Work Australia must not approve an enterprise agreement unless the agreement is necessary to achieve pay equity or implements pay equity.

Recommendation 16

That Fair Work Australia ensure that where a significant proportion of an organisation's employees are from a non-English speaking background, that the explanation of the terms of an employment agreement have been explained in the employee's own language.

Recommendation 17

That the Australian Government place on the COAG agenda the consideration of the introduction of complementary legislation in relation to all equal remuneration matters dealt with by Fair Work Australia in each jurisdiction.

Recommendation 18

That section 582 of *Fair Work Act 2009* be amended to require the President of Fair Work Australia to state explicitly the appropriate equal remuneration principle and to give detailed direction on how equal remuneration is to be handled.

6 - Anti-discrimination legislation**Recommendation 19**

That the *Sex Discrimination Act 1984* be amended to enable the Sex Discrimination Commissioner to commence self initiated complaints for alleged breaches of the Sex Discrimination Act, without requiring individual complaint and including the ability to enter negotiations, reach settlements, agree enforceable undertakings and issue compliance notices.

Recommendation 20

That the *Sex Discrimination Act 1984* be amended to enable the Australian Human Rights Commission to commence legal action in the Federal Magistrates Court or Federal Court for a breach of the Sex Discrimination Act.

Recommendation 21

That the *Sex Discrimination Act 1984* be amended to make it mandatory for employers who are repeat offenders discriminating on the basis of pregnancy or carer's responsibility to be required to attend counselling or an approved training course.

7 - Pay Equity Unit**Recommendation 22**

That the Minister introduce an Act to establish a specialist pay equity unit within Fair Work Australia as central point for pay equity monitoring, development and application of pay equity audits, development of pay equity plans; and the provision of specialist assistance to Fair Work Australia in award modernisation

Recommendation 23

That a Deputy President be assigned responsibility for the administration, conduct and strategic output in relation to the activities of the Pay Equity Unit.

Recommendation 24

That the Deputy President appoint an Advisory Board comprising relevant government agencies, union, employer and employee representatives to provide input into strategic policy development.

Recommendation 25

That all federal public sector organisations be required to report biennially to the Pay Equity Unit within Fair Work Australia on the implementation of a diversity plan to increase pay equity.

Recommendation 26

That all federal public sector organisations be required to report biennially to the Pay Equity Unit within Fair Work Australia on the implementation of a gender equity duty in relation to employees and in service provision.

Recommendation 27

That all organisations with 100 or more employees be required to report biennially to the Pay Equity Unit within Fair Work Australia on the implementation of a diversity plan to increase pay equity.

Recommendation 28

That the Pay Equity Act include a schedule for the amendment of the *Taxation Administration Act 1953*, specifying that the Commissioner be enabled to disclose aggregate wages and salary and other relevant information acquired under the taxation law to a Pay Equity Unit officer if the Commissioner is satisfied that the request is relevant and necessary to the work of the Unit.

Recommendation 29

That the proposed Pay Equity Act include a provision making it mandatory for small and medium businesses to be required to submit an audit report in response to a specific request from the Pay Equity Unit.

Recommendation 30

That the Employer of Choice for Women Awards be extended to medium and small business categories.

Recommendation 31

That the Deputy President of Fair Work Australia responsible for the Pay Equity Unit be required to seek advice through the appointment of an advisory board comprising unions, employers and employer groups and

other stakeholders to provide strategic input in relation to industry specific strategies.

Recommendation 32

That the Equal Opportunity for Women in the Workplace Act 1999 be repealed and the functions of the office be incorporated in the proposed Pay Equity Act.

8 - Administrative approaches

Recommendation 33

That the Government require the Procurement Coordinator monitor the application of the Commonwealth Procurement Guidelines by agencies to ensure that firms that are not compliant with relevant pay equity principles are not eligible for Commonwealth contracts.

Recommendation 34

That the Procurement Coordinator investigate, as a matter of urgency, the adequacy of practical implementation of the Procurement Guidelines to ensure that the outcome meets relevant pay equity principles.

Recommendation 35

That Government ensure that industry assistance is only provided to firms that are compliant with pay equity principles and that the outcome of the assisted program is compliant with the pay equity principles.

Recommendation 36

That the Government revise the current list of industry assistance programs to ensure that a compliance requirement with pay equity principles is applied to all appropriate funding allocations.

Recommendation 37

That the *Superannuation Guarantee (Administration) Act 1992* be amended to remove the exemption from the payment of the 9 per cent charge for employees who earn less than \$450 per month and that the required superannuation contributions be paid for all employees into a designated or approved superannuation fund of their choice

Recommendation 38

That the Government broaden the scope of the Superannuation Co-contribution scheme to include all low income earners.

Recommendation 39

That the Government establish a superannuation fund or modify Ausfund to be an available fund for the receipt of monies on behalf of these employees who earn less than \$450 with any employer to reduce the likelihood of multiple administration costs charged to workers with multiple employers.

Recommendation 40

That the Government provide a long service leave scheme providing portability of service for workers, together with an equitable application of long service leave contributions by employers in appropriate industries.

Recommendation 41

That the Office for Women be located within the Department of Prime Minister and Cabinet.

Recommendation 42

That all relevant Cabinet submissions be accompanied by an analysis of the potential impact of the proposal on pay equity in Australia.

Recommendation 43

That the Minister for the Status of Women provide an annual statement to Parliament on Australia's progress in improving women's economic and financial independence which includes an analysis of the pay equity situation in Australia.

Recommendation 44

That the Department of Prime Minister and Cabinet amend the 'Requirements for Annual Reports for Departments, Executive Agencies and FMA ACT bodies', Section 12 (3) Management of Human Resources (b), the word 'gender' to read 'gender including pay equity issues' for the preparation of annual report to Parliament.

Recommendation 45

That the Australian Public Service Commission be required to report on gender pay gap in the Australian Public Service in the annual State of the Service reports.

Recommendation 46

That the government incorporate in the current review of the Australian Public Service the adequacy of the current collective agreement wage

setting processes to meet pay equity principles required under Australia's international obligations.

Recommendation 47

That all government agencies and authorities be required to implement a gender equality scheme and to report on policies and practices in the delivery of services.

9 - Data collection and research

Recommendation 48

That the Pay Equity Unit consider and respond to the findings and recommendations of the Women in Social and Economic Research 2006 report *Women's pay and conditions in an era of changing workplace regulations: Towards a "Women's Employment Status Key Indicators" (WESKI) database*.

Recommendation 49

That the Australian Bureau of Statistics, where possible, review all existing surveys and data, relevant to pay equity, for evidence of any trends over time in pay inequity and issues affecting female participation in the workforce.

Recommendation 50

That the Australian Bureau of Statistics amend data surveys as follows:

- Survey of *Average Weekly Earnings* (cat no. 6302.0)
seek further detail of different occupation or occupational categories;
disaggregate data to managerial and non-managerial employee level.

Recommendation 51

That the Australian Bureau of Statistics, where possible, introduce gender disaggregation into all surveys that relate to pay equity issues.

Recommendation 52

That a National Pay Equity Workplace Survey be developed and conducted biennially by the Department of Education, Employment and Workplace Relations in partnership with the Pay Equity Unit.

The survey should cover, but not be limited to:

- average hourly and weekly wage rates for employees in non-managerial and non-professional occupations;

- provisions for the adjustment of wages rates during the life of the agreement;
- compensatory wage payments for the absorption of penalty rates and/or other employment conditions;
- the inclusion of non wage benefits such as bonus payments;
- the incidence of trading off provisions, such as annual leave for wage payments;
- the incidence of averaging ordinary working hours across several weeks or months and common averaging periods used for this purpose;
- ordinary working hours, including the incidence of ordinary working hours of more than forty per week;
- the availability of flexible start and finish times and breaks;
- developments or changes in the standards of family-friendly provisions such as access to paid family or parental leave;
- the availability of other forms of leave such as annual leave, unpaid leave and long service leave; and
- access to family friendly employment benefits such as employer provided or subsidized childcare.

Recommendation 53

That the Department of Families, Housing, Community Services and Indigenous Affairs consult with:

- Melbourne Institute of Applied Economic and Social Research at the University of Melbourne;
- Australian Council for Educational Research;
- Australian Institute of Family Studies, and
- the Pay Equity Unit,

in relation to possible improvements to Household Income and Labour Dynamics Australia survey to encompass pay equity considerations.

Recommendation 54

That a working group consisting of Commonwealth departments and agencies, as well as relevant stakeholders be established within the Pay Equity Unit to progress greater comparability of data collections.

10 - Women's choices?

Recommendation 55

That the Government as a matter of priority collect relevant information of workforce participation of Indigenous women to provide a basis for pay equity analysis and inform future policy direction.

Recommendation 56

That the Government as a matter of priority collect relevant information of workforce participation of women with disabilities to provide a basis for pay equity analysis and inform future policy direction.

Recommendation 57

That the Minister for Immigration and Citizenship review the adequacy of English language tuition and the need to reinstate these programs.

Recommendation 58

That the Minister for Immigration and Citizenship investigate options for the improvement of current processes for the accreditation of overseas migrants.

Recommendation 59

That the Minister for Employment and Workplace Relations seek cooperation from the State and Territory Governments to develop opportunities for the provision of work experience in government departments or instrumentalities for migrant women

Recommendation 60

That the Government ensure that CALD women receive the appropriate information about all employment related initiatives such as paid maternity leave.

Recommendation 61

That the Government review existing policies to encourage and assist employers in the provision of child care facilities.

Recommendation 62

That the Government assign the responsibility out of school care to a specific portfolio to provide a focus for policy development and consideration and cooperation with the States and Territories.

11 - Cultural dimensions

Recommendation 63

That the Minister raise with the Ministerial Council of Education, Early Childhood Development and Youth Affairs a matter relating to review of curriculum and careers advice/course selection processes in all educational institutions for gender stereotyping.

The persistence of the gender pay gap experienced by Australian women workers is unjust, inequitable and inefficient.¹

Introduction

- 1.1 In March 2008, just over 50 per cent of Australia's population was female; 2.2 per cent of these were Indigenous and 23.9 per cent were born overseas.² The rate of women's labour force participation increased from 45 per cent in 1985 to 58 per cent in 2008.³

Economic imperative

- 1.2 There are clear benefits in increasing women's participation in the workforce in terms of increased gross domestic product and national productivity:

The effective implementation of pay equity measures is of importance in redressing gender inequality in workplace arrangements, for the advancement of wider equal opportunity strategies, for securing greater economic independence for women, and for the economic and social wellbeing of families. Moreover, pay equity can have implications for workforce

1 Work and Family Policy Roundtable, *Submission No. 143*, p. 1.

2 Office for Women, 2009, *Women in Australia 2009*, Department of Families, Housing and Community Services and Indigenous Affairs, 19 March 2009, pp. 1-2.

3 Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Submission No. 112*, p. 3 citing Australian Bureau of Statistics, Cat No. 6202.0, *Labour Force Australia*, Canberra, 2008.

development and the development of skilled and viable labour markets.⁴

1.3 The increase in female employment of the last 20 years has :

... contributed more to global GDP growth than have either new technology or the new giants China and India. Add the value of housework and child-rearing, and women probably account for just over half the world output. It is true that women still get paid less and few make it to the top of companies, but, as prejudice fades over coming years, women will have great scope to boost their productivity – and incomes.⁵

1.4 Productivity increases have been pivotal in the United Kingdom's approach. Figures released by the Women and Work Commission in 2005 estimated that should the causes of the pay gap be resolved, the benefits would be two per cent of GDP (£23 billion) to the United Kingdom's economy.⁶ Prime Minister Gordon Brown stated that 'for too long the equality issue has been marginalised and seen as part of social policy, not macro-economic policy'.⁷

There is a real need for education and information regarding pay equity. The economic imperative to do so is compelling but so should the notion of social justice be a high motivating factor for government to ensure gender pay equity. Nevertheless it is recognised that "pay equity is associated with higher productivity through better use of skills and higher workforce participation rates."⁸

1.5 The Queensland Government pursued pay equity as part of its strategic policy to build on economic success by maximising participation in the labour market through:

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- 4 New South Wales Office for Women's Policy, *Submission No. 153*, pp. 11-12 citing Trish Todd and Joan Eveline, *Report on the Review of the Gender Pay Gap in Western Australia*, November 2004, pp. 21-22 at: http://www.commerce.wa.gov.au/LabourRelations/Content/Work%20Life%20Balance/Pay%20Equity/2004_Review_of_the_Gender_Pay_.html, viewed 28 September 2009.
- 5 'The importance of sex', *Women in the workforce*, *The Economist*, 15 April 2006, p. 16.
- 6 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 3.
- 7 Australian Education Union, *Submission No. 76*, p. 21 citing Equal opportunity Commission, 2007, *Working Outside the Box: Changing work to meet the future*, Executive Summary, Equal Opportunities Commission, European Union, p. 14.
- 8 Australian Education Union, *Submission No. 76*, p. 21 citing Queensland Industrial Relations Commission, 2006, p. 5.

- delivering a fair industrial relations system and improving workforce management by putting people, safe jobs and workplaces first;
- encouraging full participation of the available labour supply.⁹

1.6 The New South Wales Pay Equity inquiry found that:

... pay equity can improve efficiencies within the labour market ... when implemented incrementally to spread any wage adjustments over time, and given a reasonable rate of economic growth, pay equity measures could have positive impacts on the economy. The Inquiry found that, to the extent that gender discrimination represents a suboptimal allocation of resources, changes in the composition of employment because of pay equity can represent improvement in economic efficiency and resource allocation.¹⁰

1.7 Any aspect of the labour market that limits the optimum allocation of resources will prevent the achievement of Australia's full economic potential.¹¹ Equal Employment Opportunity Network of Australasia observed that to date pay equity in Australia has not been a priority issue. Pay equity is relegated to the righting of an historic wrong and may not be seen as 'moving the agenda forward'.¹² However, Dr Sara Charlesworth suggested:

... gender pay inequity is the canary in the mine in terms of women's employment. It tells you something is wrong – it does not necessarily tell you what is wrong; it does not necessarily tell you what causes it.¹³

1.8 The Community and Public Sector Union State Public Services Federation Group (CPSUFG) also highlighted the fact that a failure to resolve inequality has resulted in an inefficient labour market affecting labour supply, productivity, efficiency and labour turnover and 'also has a significant impact on tax and welfare systems'.¹⁴

9 Queensland Government, *Submission No. 135*, p. 3.

10 New South Wales Office for Women's Policy, *Submission No. 153*, p. 12.

11 See discussion in Diversity Council Australia, *Submission No. 110*, p. 15.

12 Ms Juliet Bourke, Chair, Equal Employment Opportunity Network of Australasia, *Transcript of Evidence*, 26 September 2008, p. 82.

13 Dr Sara Charlesworth, Research Fellow, Centre for Applied Social Research, *Transcript of Evidence*, 2 April 2009, p. 23.

14 Community and Public Sector Union State Public Services Federation Group, *Submission No. 107*, p. 5.

Definition of pay equity

1.9 Pay equity is a complex concept linked to a range of factors. The definitions suggested to the inquiries reflect this in their scope and variety.

1.10 Community and Public Sector Union State Public Services Federation Group defined *Pay equity* means that men and women should receive the same pay, benefits and conditions for work of equal or comparable value: it is equal pay for different but equivalent work:

Pay Equity as a concept is defined within ... [ILO Convention 100] as 'not about men and women earning the same; nor is it about changing the work that women do. Pay equity is about redressing the *undervaluation* of jobs typically performed by women and remunerating them according to their value'. Put simply, it means remuneration of work through proper valuing of work which is free from gender bias.¹⁵

1.11 New South Wales Office for Women's Policy added that:

Pay equity refers to both the goal and the process of reducing the overall gender pay gap and promoting equitable access to the workplace for women and men. Pay equity addresses structural and historical disadvantages in remuneration levels between women and men, and is concerned with wages and conditions of work, removing direct and indirect discrimination, and ensuring equitable access to leave, flexible working practices, and training and promotion opportunities ... further potentially positive economic impacts of pay equity measures included: improved overall community wellbeing if discrimination can be removed through pay equity measures; improvements in opportunities and choices for women by providing economic independence; reduction in the need to rely on State support such as welfare or income support; and more transparent award structures and enhanced organisational productivity.¹⁶

1.12 The National Foundation for Australian Women defined pay equity as:

... a simple idea: men and women should receive equal remuneration for work of equal value. It means that the gender of

15 Community and Public Sector Union State Public Services Federation Group, *Submission No. 107*, p. 3.

16 New South Wales Office for Women's Policy, *Submission No. 153*, pp. 8, 12.

a worker is irrelevant when their work is valued and paid for with wages and other benefits.¹⁷

- 1.13 For the purposes of pay equity, remuneration includes all elements of work related rewards including allowances, benefits, bonuses, superannuation, performance related payments and non-monetary benefits.¹⁸ Law Council of Australia expanded:

The contemporary remuneration package includes wages, bonuses, shares, discretionary allowances, performances incentives, merits or bonus payments and superannuation, as well as access to benefits such as a car, computer, mobile phone and other forms of indirect remuneration.¹⁹

- 1.14 The International Trade Union Confederation (ITUC) believed the key challenge is to be able to 'distinguish pay differences resulting from different labour market characteristics, on the one hand, and difference due to indirect or direct discrimination, on the other hand',²⁰ including the societal difference in the evaluation of work and female dominated sectors or occupations.²¹ It is difficult to compare two jobs and their compensation when each comprises a different set of tasks. The basis of pay equity is

... the idea that women should be remunerated fairly for the work that they do, without discrimination or harassment or a gender bias which creates undervaluation of work, barriers to promotion or training.²²

- 1.15 The idea of work of comparable value is important because while:

... the concept of 'equal value' allows for equal remuneration when men and women are doing identical work, comparable value allows for a broader consideration of the factors noted above which contribute to pay inequity. In particular, 'comparable value' recognises the highly sex segregated nature of the work force (i.e.

17 National Foundation for Australian Women, *Submission No. 94*, p. 10.

18 Community and Public Sector Union State Public Services Federation Group, *Submission No. 107*, p. 3.

19 Law Council of Australia, *Submission No. 144*, p. 3.

20 ILO Convention 111 defines discrimination as 'any distinction, exclusion or preference, which has the effects of nullifying or impairing equality of opportunity or treatment in employment or occupation'.

21 International Trade Union Confederation, 2008, *The Global Gender Pay Gap*, p. 53. See also Commission of the European Communities (2007) Communication from the Commission: *Tackling the Pay Gap between Women and Men*, Brussels 18 July 2007, p. 2.

22 Ms Amanda Richards, Assistant General Secretary, Queensland Council of Unions, *Transcript of Evidence*, 31 March 2009, p. 12.

concentration of women's employment in a narrow range of occupations and industries) and the undervaluation of feminised work. There is often no identical occupational comparator group for areas of female dominated employment (eg. dental assistants). In such cases, 'comparable value' facilitates comparisons with work of a similar nature (eg work requiring similar qualifications) in order to allow a means by which women's work can be valued in a fair and equitable manner.²³

1.16 The Victorian Government described pay equity as:

...a shared objective, not an us-and-them issue; no-one would support unequal outcomes based on gender; a genuine concern to understand whether there are pay gaps and if so why; a conviction that there is no reason to hide the facts, if there is a gap it needs to be fixed; a good fit with business commitment to improve performance by drawing as broadly as possible on available talent; and a chance to understand better the impact of overt policies and initiatives targeting cultural change already in place in the bank.²⁴

1.17 Relative measures of women's and men's pay levels used are the *gender wage gap* which is the difference between male and female earnings as a proportion of male earnings and the *gender wage relativities* which is the female earnings as a proportion of male earnings. The Commission of the European Communities defines this as 'the difference between average gross hourly earnings of male-paid employees and of female paid employees as a percentage of average gross hourly earnings of male paid employees'; it is the 'relative difference in the average gross hourly earnings of women and men within the economy as a whole'.²⁵ CPSUPFG stated that:

The 'gender wage gap' gives us some indication of the 'aggregate' problem but we need to examine and target particular workforces and occupations.²⁶

1.18 Pay equity is 'not a straightforward issue: the lack of gender pay equity is a complex problem stemming from embedded social and structural

23 Queensland Government, *Submission No. 135*, p. 4.

24 Ms Sarah Tuberville, Department of Innovation, Industry and Regional Development, Victoria, *Transcript of Evidence*, 2 April 2009, p. 2.

25 Commission of the European Communities, *Communication from the Commission: Tackling the Pay Gap between Women and Men*, Brussels 18 July 2007, pp. 2, 15.

26 Community and Public Sector Union State Public Services Federation Group, *Submission No. 107*, p. 2.

discrimination and disadvantage'.²⁷ Barriers to participation include lower pay, less job security and fewer entitlements and the need to balance family commitments.²⁸

1.19 The Queensland Government elaborated on concept of pay equity to include:

... a larger application than equal pay (i.e. equal pay for the same work) in that it attempts to consider the wide range of issues underlying and contributing to the earnings gap between men and women. These issues include entrenched historical practices, the invisibility of women's skills, the lack of a powerful presence in the industrial system, and the way that 'work' and how we value work is understood and interpreted in the industrial system.²⁹

1.20 The Commission of the European Communities emphasised the structural character of pay inequity:

...objective differences and openly discriminatory practices are not enough in themselves to explain why a pay gap still exists. The pay gap is also linked to a number of legal, social and economic factors which go far beyond the single issue of equal pay for the same job.³⁰

1.21 Pay equity has been analysed into several facets:

- *Employment equity* is equal access to jobs offered by an employer which means that women and men and the visible minorities have equal opportunity when applying for jobs.
- *Internal equity* is when a person working is being paid the same as the person of the same gender sitting nearby for the exact same job.
- *Horizontal pay equity* is about 'the value put on occupations in which women predominate and in which men predominate'.³¹
- *Vertical pay equity* relates to 'the idea that women are not going to stay in the workforce or are going to be unreliable because of their second,

27 Community and Public Sector Union, *Supplementary Submission No. 13.1*, p. 1.

28 National Council of Women of Australia Inc Ltd, *Submission No. 37*, p. 2.

29 Queensland Government, *Submission No. 135*, p. 4.

30 Commission of the European Communities (2007) Communication from the Commission: Tackling the Pay Gap between Women and Men, Brussels 18 July 2007, p. 3.

31 Dr Christine Short, *Transcript of Evidence*, 19 March 2009, p. 3.

unpaid, job at home'. Examples of women not being promoted were more frequent in larger firms and organisations.³²

1.22 The Liquor, Hospitality and Miscellaneous Union, Queensland Branch linked pay inequity to:

- Perpetuation of the generational poverty cycle;
- Familial financial instability affecting women's and families decisions to have children, and affecting the ability of families to raise children as the next generation of productive workers;
- Lower retirement entitlements for women therefore placing a greater burden on the public welfare system;
- Contributing to the skills shortage in the Australian economy by providing a disincentive for Australian women to remain engaged in the workforce;
- Lowered productivity; and
- Corollary increased burden on public welfare institutions, such as health care, due to low incomes.³³

1.23 Determining appropriate policy approaches to eliminating the pay gender gap clearly lie in the identification of the causal factors.

Contributing factors to pay inequity

1.24 The factors contributing to pay inequity are complex and multifaceted. Evidence to the inquiry listed a number of factors as making a contribution and these are summarised below to provide an overview:

- social expectations and gendered assumptions about the role of women as workers, parents and carers resulting in majority of primary unpaid caring responsibilities undertaken by women;
- disproportionate participation in part time and casual employment leading to few opportunities for skill development and advancement resulting in a concentration of women in lower level classifications;
- invisibility of women's skills and status leading to an undervaluation of women's work and the failure to re-assess changing nature of work and skill; unrecognised skills described as creative, nurturing, caring and so forth;
- labour market tenure and engagement, and more precarious attachment to the workforce;

32 Dr Christine Short, *Transcript of Evidence*, 19 March 2009, p. 4.

33 Liquor, Hospitality and Miscellaneous Union, Queensland Branch, *Submission No. 138*, pp. 2-3.

- industry and occupational composition and segregation factors attributable to geography and desirability of work
- sex discrimination and sexual harassment;
- concentrated in award-reliant employment with less opportunity to collectively bargain for higher wages, working in small workplaces and with low union participation;
- treatment by industrial tribunals and regulation; and the misguided belief that if men and women are subject to the same laws, rules and conditions, then equality will result;
- women's apparent higher job satisfaction with work at a given wage level means employers less likely to feel under pressure to improve wages for employees. Trade off between monetary rewards and non-monetary rewards;
- working in service rather than product related markets;
- poor recognition of qualifications, including vastly different remuneration scales for occupations requiring similar qualifications and the way that 'work' and how we value work is understood and interpreted within the industrial system; and
- women receive lower levels of discretionary payment such as over award payments, bonuses, commissions and service increments and profit sharing, partly because in the industries where women are employed, over award payments are not usually available.³⁴

1.25 Group Training Australia divided these into two categories (a) internal factors such as qualifications, skills, individual productivity, experience or tenure, job endowments and allowances and how the work is described and (b) external factors such as institutional and market factors; sector productivity gains; segmentation or segregation of industrial arrangements, discrimination and access to overtime.³⁵ EOWA stated that:

34 For example see New South Wales Office of Women's Policy, *Submission No. 153*, pp. 3-4; Ms Cate McKenzie, Executive Director, Office of Women and Group Manager Women, Children and Parenting Support, Department of Families, Housing, Community Services and Indigenous Affairs, *Transcript of Evidence*, 25 September 2008, p. 1; Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Submission No. 112*, p. 13; Australian Chamber of Commerce and Industry, *Submission No. 84*, p. 2; National Foundation for Australian Women, *Submission No. 94*, pp. 2-3; Diversity Council Australia, *Submission No. 110*, p. 8 citing New South Wales Office of Industrial Relations (2004). *Why is there a gap between men's and women's earnings?* Available at: <http://www.industrialrelations.nsw.gov.au/About_OIR/Issues_and_policy/Archive/Pay_equity_inquiry/Men_and_womens_earning.html>; South Australian Government, *Submission No. 124*, p. 4; Ms Nareen Young, Executive Director, Diversity Council Australia Ltd, *Transcript of Evidence*, 26 September 2008, p. 34; Independent Education Union of Australia, *Submission No. 100*, p. 6.

35 Group Training Australia, *Submission No. 45*, p. 7.

The gender pay gap reflects the low value placed on the work women do, the unequal distribution of overtime and promotional opportunities, the impact of caring responsibilities, the continued reluctance to invest in women through training and development, old fashioned beliefs about women's abilities and roles and the failure to understand the difference between hours worked and outcomes achieved.³⁶

1.26 Diversity Council of Australia suggested that one factor in determining levels of pay equity is:

whether or not women have tended towards these jobs and industries because they have traditionally and contemporarily offered less access to 'over-award' conditions in hours terms and have thus been viewed, in the community terms, as 'women's jobs' and as places women can work comfortably within the employment market constraints of care-giving.³⁷

1.27 Factors contributing to the gender pay gap may differ between industries. For instance, the Finance Sector Union pointed out the need to consider the gender pay gap at a workplace or industry level due to specific complexities. The finance industry relies more heavily on market data and pay may include base salary, superannuation, discretionary payments, incentives, bonuses, shift allowances, car and meal allowances and overtime.³⁸ The reasons for the relatively high gender pay gap in this industry include:

- the increasing reliance on performance based pay;
- a lack of transparent pay relativities between jobs;
- employers using complex state and national market-based pay data;
- inconsistent and unclear job evaluation systems; and
- privacy/secretcy.³⁹

Benefits of pay equity

1.28 At the national economic level, Group Training Australia commented that:

36 Equal Opportunity for Women in the Workplace Agency, *Submission No. 113*, p. 11.

37 Diversity Council Australia, *Submission No. 110*, p. 8.

38 Finance Sector Union of Australia, *Submission No. 122*, p. 4.

39 Finance Sector Union of Australia, *Submission No. 122*, p. 1.

...implementing the principle of equal pay for work of equal value would result in a reduction in household poverty and alleviation of the poverty trap. Benefits include an increase in economic freedom, and in the status and dignity attached to women's work for individuals.⁴⁰

1.29 The New South Wales Office for Women's Policy commented that:

... at a workplace level there are benefits for employers in adopting pay equity strategies, including improved workforce morale, enhanced organisational effectiveness, reduced staff turnover, an enhanced skill base and productivity improvements. Employers complying with pay equity strategies can become employers of choice for women who see their qualifications and skills appropriately remunerated.⁴¹

1.30 In 2007, the Queensland Industrial Relations Commission (QIRC) highlighted the potential for greater labour force productivity from the perception of improved equity and more employee focussed workplace flexibility, adding that the benefits to business cannot be underestimated.⁴² These benefits include avoiding discrimination and harassment law suits; attracting, retaining and motivating employees; increased productivity and innovation; enhanced management style; gains in the number of female customers; and promoting yourself as a good employer.⁴³

1.31 The Australian Council of Trade Unions (ACTU) also emphasised the importance of pay equity to Australia's productivity and future prosperity as well as basic human rights obligations, democratic rights and Australia's traditions of inclusiveness and equality.⁴⁴

Pay equity promotes greater labour force participation of women, enhancing the quality of the Australian labour market and assisting in sustaining the tax base of an ageing population.

40 Group Training Australia, *Submission No. 45*, p. 6.

41 New South Wales Office for Women's Policy, *Submission No. 153*, p. 12 citing Queensland Industrial Relations Commission, *Pay Equity - Time to Act*, Final Report of the Queensland Pay Equity Inquiry, September 2007, pp. 21-22
<http://www.qirc.qld.gov.au/inquiry/pay_equity/final/final_report.htm>.

42 Queensland Industrial Relations Commission, 2007, *Pay Equity TIME TO ACT*, Inquiry to examine the impact of the federal Government's WorkChoices amendments to the *Workplace Relations Act 1996* on pay equity in Queensland, pp. 2 and 9.

43 Business Victoria at:
<http://www.business.vic.gov.au/BUSVIC/STANDARD/PC_61636.html>; Fisher G (2007) *Pay Equity Time to Act*, Queensland Industrial Relations Commission, September 2007.

44 Australian Council of Trade Unions (ACTU) and Joint State Union Peak Councils, *Submission No. 125*, p. 7.

Treasury modelling shows that a modest 2.5% increase in labour participation rates would produce an additional 9% increase in economic output by 2022.⁴⁵

1.32 The ACTU added that:

Improving the participation rates of Australian women and their position in the labour market (including most notably their earnings) would have a significant effect in lifting Australia's overall economic performance ... UK studies have shown that gendered workplace inequality damaged UK productivity and that significant gains would be made from improving women's remuneration.⁴⁶

1.33 The value of paid work is not only about money. Women who realise that someone else in the workplace received different remuneration levels take it as 'a personal affront and a personal problem' and perceive the difference in terms of how they are valued.⁴⁷ Paid work is 'an important aspect of ... [women's] identity and allows them to use their skills and continue to develop professionally'.⁴⁸

1.34 Ms Emma Ritch described an organisation which does not have a gender pay gap as one which has:

... a distribution of men and women at all levels of the organisation. That would need to be supported with flexible working practices that meant that both men and women could balance work and family life. You would expect to see a lack of horizontal occupational segregation – men and women grouped at all levels of the organisation across different work functions. I think you would expect to see similar levels of progression for both. You would probably not have a performance related pay system, or if you did have performance related pay then I think there would be quite strict moderation and assessment of that to

45 Australian Council of Trade Unions (ACTU) and Joint State Union Peak Councils, *Submission No. 125*, p. 7, citing Gruen D and Garbutt M, 2003, *The output implications of Tighter Labour Force Participation*, Treasury Working Paper, 2003-02.

46 Australian Council of Trade Unions (ACTU) and Joint State Union Peak Councils, *Submission No. 125*, p. 7 citing ABS Labour Statistics and Walby S and Olsen W, 2002, 'The impact of women's position in the labour market on pay equity and the implications for UK productivity' (UK Department of Trade and Industry, Women and Equality Unit).

47 Ms Erin Wood, Director, Professional Services and National Women's Coordinator, Association of Professional Engineers, Scientists and Managers Australia, *Transcript of Evidence*, 2 April 2009, p. 55.

48 Human Rights and Equal Opportunity Commission (2008) *Gender equality: What matters to Australian women and men, the Listening Tour Community Report*, p. 9.

ensure that individual managers were not wholly responsible for decision making. And I think you would have levels of recruitment or quality of recruitment that was fair in terms of representation on recruitment panels – and advertising across a whole range of media outlets so that job adverts were accessible to all.⁴⁹

The pay equity inquiry

Referral to the Committee

1.35 On 26 June 2008 the Minister for Workforce Participation, the Hon Brendan O'Connor MP, requested that the House of Representatives Standing Committee on Employment and Workforce Participation 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;
- The need for further legislative reform to address pay equity in Australia.

Conduct of the inquiry

1.36 The Committee sought submissions from June 2008. Additionally the Committee wrote to Ministers, State Premiers, Chief Ministers, organisations and individuals seeking submissions to the inquiry. The

49 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 6.

inquiry was advertised in *The Australian* at fortnightly intervals, and featured on a number of occasions in *About the House* and *Sky News*.

- 1.37 One hundred and fifty five submissions and 23 supplementary submissions were received in response to the invitation to comment on the inquiry. A list of submissions is at Appendix A. A list of other documents of relevance to the inquiry that were formally received by the Committee as exhibits is at Appendix B.
- 1.38 The Committee consulted widely and took evidence at 30 public hearings in Adelaide, Brisbane, Canberra, Melbourne, Perth and Sydney. A list of organisations and individuals who gave evidence to the inquiry at public hearings is at Appendix C.
- 1.39 Copies of all submissions and transcripts that were authorised for publication are available electronically from the Committee's website at www.aph.gov.au/ewr.

Scope of the report

- 1.40 The report canvases possible legislative and administrative reforms that give greater recognition to the pay equity principle and develops an implementation strategy for achieving this.
- 1.41 Chapter 2 sets the scene and provides an overview of Australia's situation in the global context. This Chapter presents a contextual backdrop to the key issues addressed throughout the report. The participation of women in the workforce is considered particularly in the relation to the education levels, age, workforce composition, occupation and industry segregation and feminisation. The regional disparity and the public and private sector differences in the gender pay gap are also summarised.
- 1.42 Chapter 3 provides a brief look at how Australia compares globally and Australia's international obligations. The OECD currently provides an annual international comparison on various measures relevant to pay equity. Australia's ranking has deteriorated in a number of these measures over recent years and measures must be put in place to stem this trend. Australia is party to a number of relevant international treaties and is required to report on these on a regular basis.
- 1.43 Chapter 4 focuses on the impact of a wage setting arrangement on pay equity. Recent research has identified significant differences in the outcomes for women on awards, individual or collective agreements.
- 1.44 Chapter 5 considers industrial relations legislative reforms and recommends amendment to the *Fair Work Act 2009* to achieve more

effective mainstreaming of the right to pay equity into the industrial relations system. Changes to the definition of remuneration, the scope of application of the right to request and the processing of individual flexibility arrangements are recommended and the need for national consistency in legislation is discussed.

- 1.45 Chapter 6 discusses the need for anti-discrimination legislative reform through amendments to the *Sex Discrimination Act 1984* to enable the Sex Discrimination Commissioner to initiate an own motion inquiry into systemic inequality and report those findings to the Federal Attorney General and/or the Federal Parliament.
- 1.46 Chapter 7 proposes the introduction of specific pay equity legislation to establish a Pay Equity Unit within Fair Work Australia and to complement *Fair Work Act 2009*. The proposal involves the establishment of a Pay Equity Unit to replace the current Equal Opportunity for Women in the Workplace Agency and to impose positive obligations on public and private sector employers to audit, plan and report on pay equity.
- 1.47 Chapter 8 outlines additional administrative options in relation to Commonwealth procurement policy; possible conditions to be attached to Commonwealth Grants and other approaches such as superannuation reform. There are also recommended mandatory reporting requirements for all government agencies including the Australian Public Service Commission. The Chapter suggests the relocation of the Office of the Status of Women to the Department of Prime Minister and Cabinet and the provision of an annual Statement to the Parliament by the Minister; and regulatory impact statements to accompany all relevant Cabinet submissions on pay equity matters. The possible introduction of a Code of Practice is also canvassed.
- 1.48 Chapter 9 refers to the adequacy of current data and the establishment of a system for disaggregated data collection with research and analysis to be performed by a specialist research program within the Pay Equity Unit resourced with skilled statisticians with expertise in this subject matter.
- 1.49 Chapter 10 looks at whether women have real choices and discusses strategies to increase women's participation in the workforce in relation to some key aspects such as quality part-time work options, flexible working arrangements, access to training and promotion and child care.
- 1.50 Chapter 11 discusses the need for community cultural change and addresses the terms of reference relating to the need for education among

employers and employees and trade unions in relation to pay equity issues.

- 1.51 Chapter 12 provides some summary concluding comments which highlight the key findings of the report.

Setting the scene

The Australian scene

- 2.1 In August 2008, 57.8 per cent of Australian women aged over 15 years were in the workforce, which equated to 45.3 per cent of the labour force.¹ For women 25 to 54 years of age, there is about 75 per cent participation.² From 1994 to 2008, there was a 41 per cent increase in female employment and 42 per cent increase in hours worked compared to a 29 per cent increase in male employment with 22 per cent increase in hours worked over the same period.³
- 2.2 In August 2007, the average mean earning from all jobs for women was \$680 per week (compared to \$1022 for male employees) partly reflecting women's greater participation in part time employment. On a comparison of full time employment earnings, women on average earned \$910 per week and men earned \$1131 weekly.⁴
- 2.3 The New South Wales Office of Women's Policy stated that:
- The aggregate gender earnings gap revealed in a November 2008 comparison between full time male and female rates was 17%,

1 Australian Bureau of Statistics, 2008, Labour Force Australia, August 2008, Catalogue No. 6202.0, ABS Canberra.

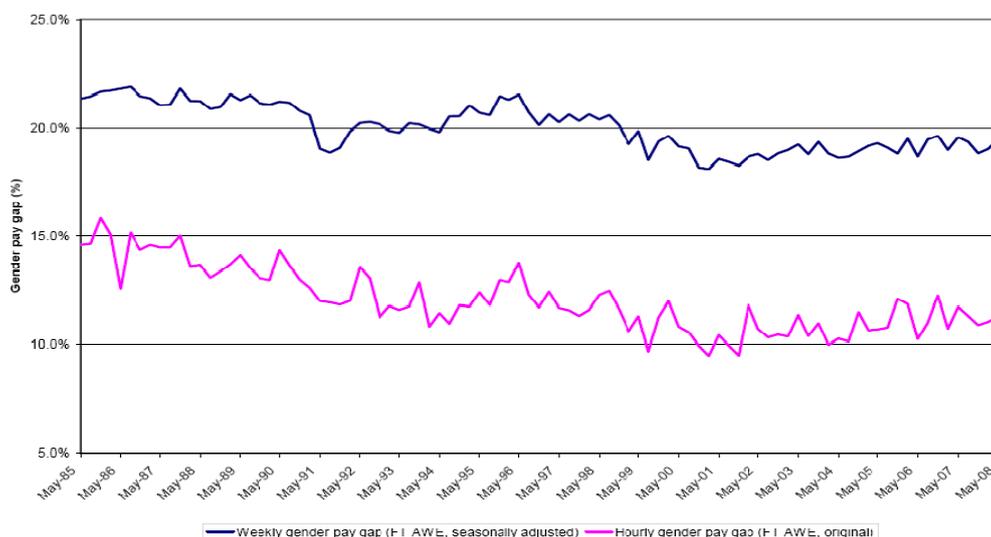
2 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, p. 2.

3 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, pp. 2-3.

4 Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender Earning differentials in Australia: A statistical overview of women's earnings*, unpublished p. 3.

widening to 35% when total earnings, including those from part-time work, were taken into account.⁵

Figure 2.1 Gender pay gap using AWE total earnings - weekly and hourly⁶



Source ABS *Average Weekly Earnings* (Cat. No.6302.0) and ABS *Labour Force, Australia, Detailed, Quarterly*, May 2008 (Cat. No.6291.0.55.003), original data.

2.4 In 2007, women in Australia earned only 83.9 per cent of the dollar earned by males for full time ordinary time earnings.⁷ Prior to 2007, the gap between male and female average earnings remained relatively constant.⁸

In May of this year Australia's gender pay gap stood at 16.2 per cent for weekly earnings and is around 11 per cent of hourly earnings. The gap declined from 1985 to 2001 but has recently increased slightly.⁹

2.5 There was a significant increase in women's earnings relative to males with the introduction of equal pay for private sector non-managerial employees.¹⁰ Dr Meg Smith showed that pay equity ratios for private

5 New South Wales Office of Women's Policy; *Submission No. 153*, p. 3 citing Australian Bureau of Statistics, *Average Weekly Earnings Australia*, Cat No. 6302.0, November 2008, Table 1.

6 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 7.

7 Human Rights and Equal Opportunity Commission, 2007 *It's About Time Women, men, work and family Final Paper 2007*, p. 80.

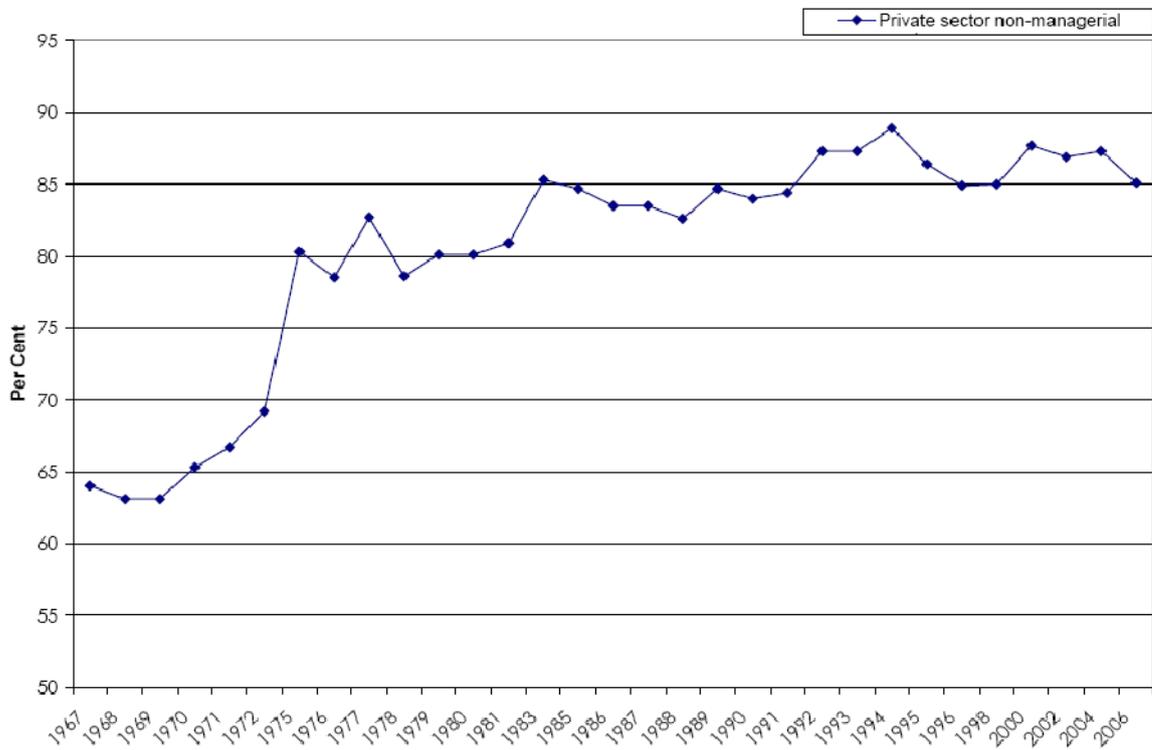
8 Fisher G (2007) *Pay Equity Time to Act*, Queensland Industrial Relations Commission, September 2007, p. 2.

9 Ms Sandra Parker, Group Manager, Workplace Relations Policy Group, Department of Education, Employment and Workplace Relations, *Transcript of Evidence*, 18 September 2008, p. 1.

10 Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender Earning differentials in Australia: A statistical overview of women's earnings*, unpublished p. 21.

sector non-managerial employees decreased rapidly prior to 1974 but have slowed since then:

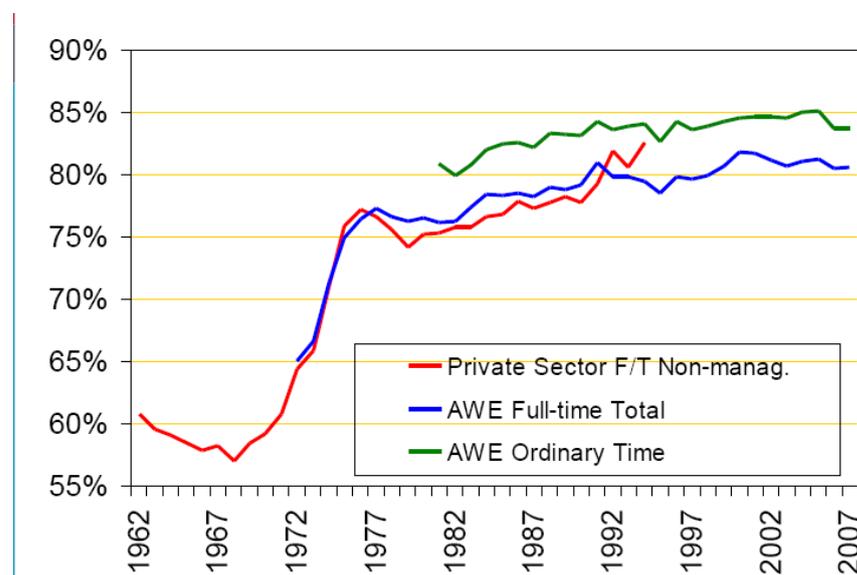
Figure 2.2 Gender pay equity ratios 1967 – 2006 (Hourly Rates, Total earnings)¹¹



Source M. Smith, 2008, 'Pay Equity principles and future agenda'. Paper presented to Women's Business – Current issues and future agendas Forum, Women and Work Research Group, University of Sydney, 7 March 2008.

11 Smith M, 2008, 'Pay Equity principles and future agenda'. Paper presented to Women's Business – Current issues and future agendas Forum, Women and Work Research Group, University of Sydney, 7 March 2008, see also The National Pay Equity Coalition and the Women's Electoral Lobby Australia Inc, Submission No. 118, Attachment 1, p. 42.

Figure 2.3 Gender wage gap over time: Female earnings as a proportion of male weekly earnings



Source Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender Earning differentials in Australia: A statistical overview of women's earnings*, unpublished, p. 21.¹²

Income distribution

- 2.6 The increase in the gender pay gap can in part be attributed to the growth in women's wages over the last decade not keeping pace with the growth in male wages.¹³ There have been two contributing factors in that women are not increasing their representation at the top of the income distribution and the growth in women's employment has been in part-time work.¹⁴
- 2.7 It has been suggested that higher salaries and promotional opportunity for men derive:

... from the continuance of the 'male breadwinner myth' in Australia, such that management assumes that men will have longer careers than women, who inevitably leave the workforce to rear children.¹⁵

12 Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender Earning differentials in Australia: A statistical overview of women's earnings*, unpublished p. 21, citing Reserve Bank of Australia, Australian Economic Statistics 1949-50 to 1996-97 Occasional Paper No. 8, Table 4.18 and Table 4.20 <http://www.rba.gov.au/Statistics/op8_index.html>, ABS 6302.0 Table 2, Average Weekly Earnings, Australia (Dollars) Seasonally adjusted. Figure 2.3 shows overlapping series as no single series is available.

13 Associate Professor Siobhan Austen, *Transcript of Evidence*, 5 November 2008, p. 17.

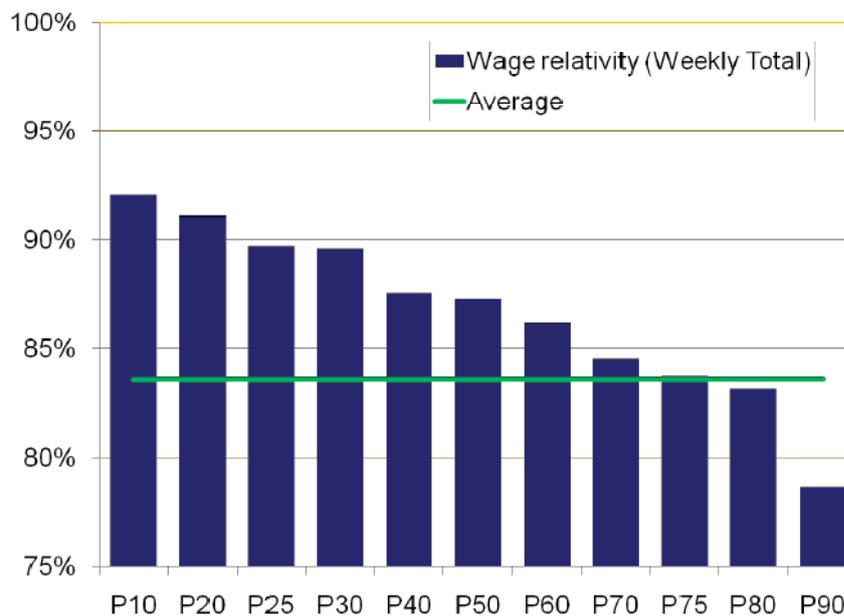
14 Associate Professor Siobhan Austen, *Transcript of Evidence*, 5 November 2008, p. 15.

15 National Council of Women of Australia Inc Ltd, *Submission No. 37*, p. 3.

2.8 The Victorian Trades Hall Council commented that the:

... basis of gender pay equity is very simple: it is about valuing skills. All the other things like lack of career progression, parental responsibility, breaking from the workforce and not having super hang off that. I think the essential heart of it is valuing the work that women do in a way that has the gender bias off. There are a number of mechanisms to do that.¹⁶

Figure 2.4 Wage relativity across the distribution (EEH Full-time non-managerial 2006)



Source Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender earning differentials in Australia: A statistical overview of women's earnings, presentation, September 2008, unpublished.*

2.9 There was greater disparity in women's wages relative to men's wages at higher wage levels. Discussions about the gender pay gap often focus on the undervaluation of work in female dominated professions, however, there is a need to address issues for professional women as well. Factors that can impact on these discrepancies include demand within industries, productivity levels and competition within and between industries.¹⁷

2.10 Associate Professor Siobhan Austen commented that:

... a positive recent trend has been the substantial growth in women's employment (albeit from a low base) in the occupational

16 Ms Barbara Jennings, Women's Office, Victorian Trades Hall Council, *Transcript of Evidence*, 2 April 2009, p. 77.

17 Chamber of Commerce and Industry of Western Australia, *Submission No. 72*, p. 11.

categories of managers, professionals and associate professionals ... it leaves open questions about why the growth in women's employment in relatively high paid occupations – managers and professionals – hasn't resulted in greater wage equality at the top of the earnings distribution.¹⁸

2.11 The New South Wales Office for Women's Policy commented that:

Men's and women's relative wages also differ across the income spectrum. In a recent analysis of data from the Household, Income and Labour Dynamics in Australia (HILDA) survey, Baron and Cobb-Clark found that while the difference between men's and women's wages was statistically significant at all points along the wage distribution, 'the gender wage gap is much larger among high wage workers, particularly in the private sector'. While for low paid workers, wage-related characteristics appeared to be significant in explaining these inequities, the largely unexplained basis for the earnings gap among high wage earners suggested the persistent prevalence of glass ceilings ... We recognise that different factors are likely to drive gender pay differentials in different parts of the labour market.¹⁹

2.12 The National Council of Women of Australia concurred describing the glass ceiling as effectively 'unbreakable in many organisations' and noting that salaries of women executives is below that of males.²⁰ EOWA reported that a survey of the top 200 companies listed on the Australian Stock Exchange that:

earnings of female chief financial and chief operating officers were on average 50 per cent lower than males;

female chief executive officers earned 67 per cent of the salaries of their counterparts; and

women occupied 7 per cent of positions within the top five executive positions in companies.²¹

18 Associate Professor Siobhan Austen, *Submission No. 126*, pp. 9-10.

19 New South Wales Office for Women's Policy, *Submission No. 153*, p. 10 citing Baron J and Cobb-Clark D, *Occupational Segregation and the Gender Wage Gap in Private- and Public-Sector Employment: A Distributional Analysis*, Institute for the Study of Labour, Discussion Paper number 3562, June 2008.

20 National Council of Women of Australia Inc Ltd, *Submission No. 37*, p. 5.

21 National Council of Women of Australia Inc Ltd, *Submission No. 37*, p. 5 citing EOWA, 2008, *Gender Income Distribution of Top Earners in ASX200 Companies Report – 2006 EOWA census of women in leadership*, 24 January 2008.

2.13 The Association of Professional Engineers, Scientists and Managers Australia listed the barriers to career progression as:

... the impact of family responsibilities, conditions of employment, flexible hours of work, workplace culture, labour market cycles, workforce retention of women, the seniority of women in professions, the existence of discrimination and more.²²

2.14 A survey conducted by the Australian Institute of Management NSW and ACT found that participation levels for females were highest in the support staff and lowest at the chief executive levels.²³ More pertinently, the gender wage gap is highest for managers and professionals.²⁴

2.15 Group Training Australia stated:

Issues of the value of work underpin both horizontal and vertical segregation of occupations. Vertical segregation prevents women accessing highly paid positions. This may be through barriers to career progression and/or work undertaken being undervalued when set against the occupation hierarchy. Horizontal segregation can provide a negative impact on women's earnings as areas of work in which women are predominantly employed are viewed as unskilled, subject to deskilling strategies and undervalued.²⁵

2.16 EOWA commented that the gap is less for low-wage minimum and award workers, however:

... the gap increases as women have more professional roles and higher salaries. So different interventions and different actions are required across the landscape to ensure that all women are able to achieve what they are entitled to – equal pay.²⁶

22 Ms Erin Wood, Director, Professional Services and National Women's Coordinator, Association of Professional Engineers, Scientists and Managers Australia, *Transcript of Evidence*, 2 April 2009, p. 47.

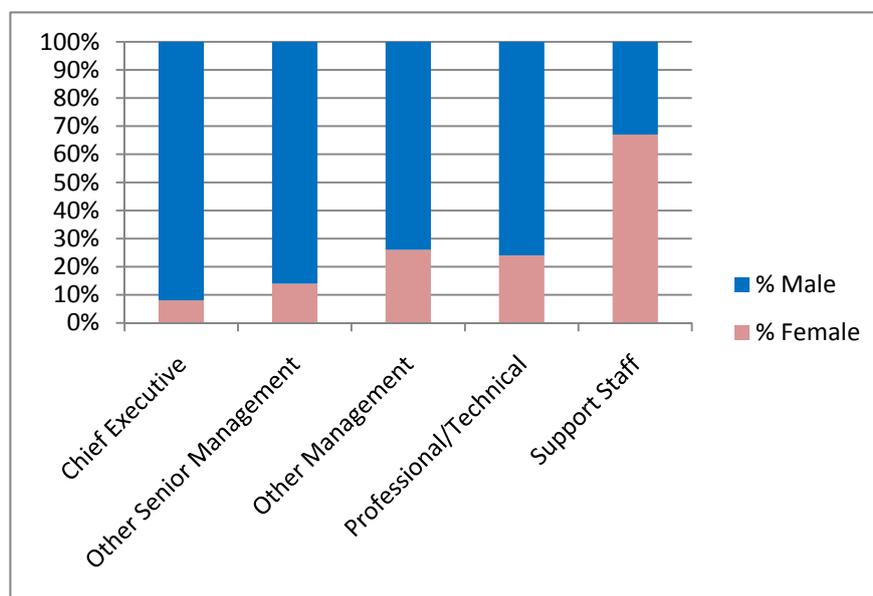
23 Australian Institute of Management NSW and ACT, *Submission No. 51*, p. 6.

24 Mr Michael Gerrity, Assistant Director, Australian Bureau of Statistics, *Transcript of Evidence*, 13 November 2009, p. 4.

25 Group Training Australia, *Submission No. 45*, pp. 10 - 11.

26 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 21.

Figure 2.5 Gender differences in workforce composition - participation levels of females at job levels



Source Adapted from Australian Institute of Management NSW and ACT, Submission No. 51, p. 6.

2.17 The Australian Institute of Management NSW and the ACT considered the population of females that occupy certain job families to be equally important:

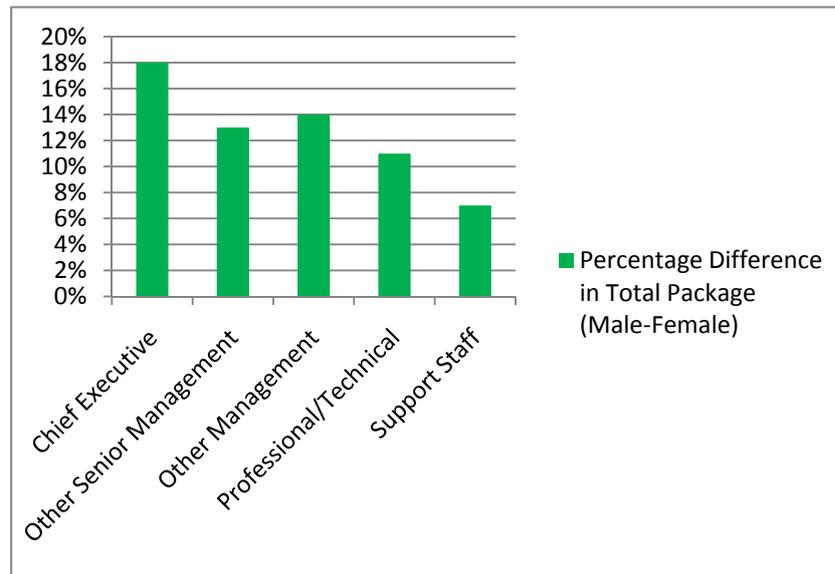
If you look at job levels with the gender pay differences ... the pay differences vary from seven to 18 per cent ... in job families that are seen by the community as mainly female, the pay differences are lower; so in support staff, the pay difference is seven per cent. But it is interesting that even in support staff, men are earning more than women. If you come up to chief executive officer positions, the pay difference is 18 per cent ... So, in the five families – chief executive, senior management, other management, professional and technical, and support staff – we see pay differences of up to 18 per cent.²⁷

2.18 Only 8 per cent of chief executive positions in the survey were occupied by females and where the CEO is female it is more likely to be a not for

27 Dr Jennifer Alexander, Chief Executive Officer, Australian Institute of Management New South Wales and Australian Capital Territory, *Transcript of Evidence*, 26 September 2008, p. 2.

profit area which are assumed to pay lower salaries.²⁸ In the area of support staff two thirds are female.²⁹

Figure 2.6 Average female earnings relative to male earnings by job level.



Source Adapted from Australian Institute of Management NSW and ACT, Submission No. 51, p. 6.

States and territories

2.19 Work and Family Policy Roundtable demonstrated that:

Whilst there has been little movement in the national pay gap over the last decade or so, at the state level there have been divergent experiences with women in Victoria, South Australia and Western Australia losing ground relative to women elsewhere.³⁰

28 Dr Jennifer Alexander, Chief Executive Officer, Australian Institute of Management New South Wales and Australian Capital Territory, *Transcript of Evidence*, 26 September 2008, pp. 2-3, 5.

29 Dr Jennifer Alexander, Chief Executive Officer, Australian Institute of Management New South Wales and Australian Capital Territory, *Transcript of Evidence*, 26 September 2008, p. 3.

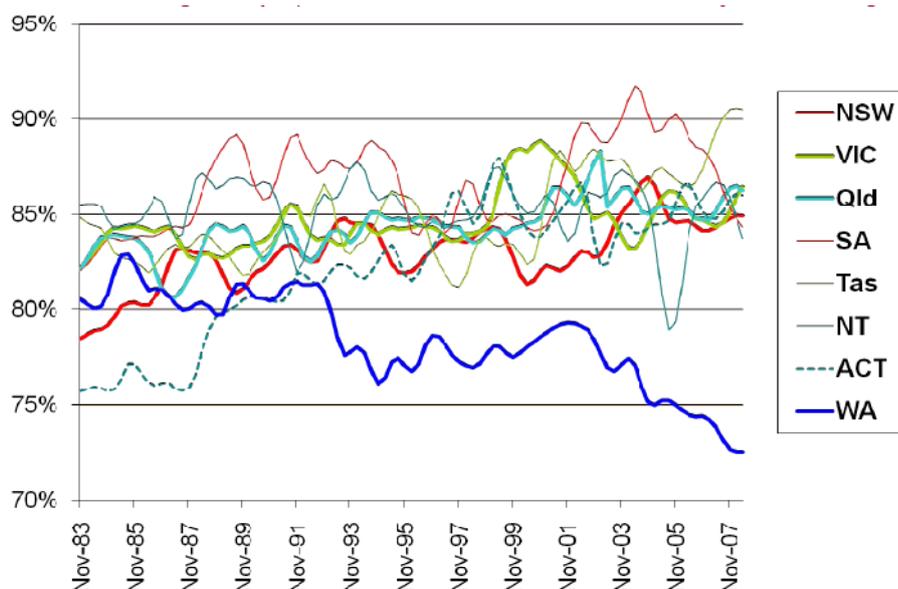
30 Work and Family Policy Roundtable, *Submission No. 143*, p. 6.

Figure 2.7 Annual Average Weekly Ordinary Time Earnings Gender Wage Ratio (in full time employment) by state and territories, 1992 -2007 (%)



Source Based on Table from Work and Family Policy Roundtable, Submission No. 143, p. 6.

Figure 2.8 Female earnings as a proportion of male (Full time Adult Ordinary Time Earnings) Trends by state and territory



Source Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender Earning differentials in Australia: A statistical overview of women's earnings, presentation, September 2008, unpublished.*

2.20 The gender pay gap in Western Australia has been higher than other states and has been increasing over the last two decades.³¹ Men's average weekly ordinary time earnings in 2007 in WA were 35.9 per cent higher than for women, compared to 28.6 per cent a decade ago.³²

31 Ms Jenness Gardner, Manager, Pay Equity Unit, Department of Commerce, Western Australian Government, *Transcript of Evidence*, 26 February 2009, p. 1.

32 Chamber of Commerce and Industry of Western Australia, *Submission No. 72*, p. 5.

2.21 Part of this disparity can be attributed to a more than 50 per cent of the increase in female participation in the WA workforce in the last two decades has been part time work, and women now comprise more than 73 per cent of the part time work force.³³ Further, in WA 88 per cent of women in the workforce are employed in service oriented industries, which have lower pay rates than resources, manufacturing and construction industries.³⁴

Public sector

Parliamentary legislators

2.22 Internationally, 18.5 per cent of parliamentary legislators were women³⁵ and this has increased from 16.3 per cent in 2005.³⁶ In Australian legislatures, the range is 19 per cent in the Western Australian Legislative Assembly to 44 per cent in the Western Australian Legislative Council:

Table 2.1 Female representation in state, territory and federal parliaments in Australia³⁷

	Lower House				Upper House			
	Male	Female	%M	%F	Male	Female	%M	%F
Federal	110	40	73	27	49	27	64	36
ACT	10	7	59	41	-	-	-	-
NSW	68	25	74	27	29	13	69	31
NT	-	-	-	-	17	8	68	32
QLD	-	-	-	-	62	31	67	33
SA	27	18	60	40	16	6	72	27
TAS	17	8	68	32	13	8	62	38
VIC	60	28	68	32	26	13	67	33
WA	48	11	81	19	19	15	56	44

Source *Compilation from websites.*

33 Chamber of Commerce and Industry of Western Australia, *Submission No. 72*, p. 7.

34 Chamber of Commerce and Industry of Western Australia, *Submission No. 72*, p. 8.

35 Women in National Parliaments: World and Regional Averages as at 30 September 2009 at <http://www.ipu.org/wmn-e/world.htm> accessed on 13 November 2009.

36 *International Parliamentary Union Annual Report*, figure given as at 1 January 2008.

37 Federal jurist diction has a House of Representatives and a Senate; ACT has a Legislative Assembly; NT and QLD have Legislative Councils; and NSW, SA, TAS, VIC, WA have both a Legislative Assembly and a Legislative Council.

Australian Public Service - Federal

- 2.23 The public sector has outstripped the private sector in terms of wage gains over the last decade.³⁸
- 2.24 Women comprise 57 per cent of Australian Public Service (APS) employees and 20 per cent of the Senior Executive Service within the APS.³⁹
- 2.25 The Australian Public Service Commission (APSC) conceded that the median remuneration for women is lower than that for men at all levels except the APS4 level and attributed this to longer median lengths of service for males.⁴⁰ The longer service of males was attributed to slower promotion rates, the recent recruitment of a greater number of women and the interruption of women's service because of family commitments.⁴¹ Recruitment in Australian police forces support this observation, where the average length of service for men is 14 years and the average for women is 7 years.⁴² This gap is expected to decrease over the next decade.⁴³
- 2.26 Promotion rates of women were overall higher than men, however, the APSC found that women taking maternity leave have 'on average lower rates of promotion compared to women who have never taken maternity leave at least in the short to medium term'.⁴⁴ Flexible working arrangements are available in most areas of the APS.⁴⁵

38 Work and Family Policy Roundtable, *Submission No. 143*, p. 6.

39 Mr Stephen Jones, National Secretary, Community and Public Sector Union, *Transcript of Evidence*, 26 September 2008, p. 67.

40 Ms Nicole Pietrucha, Group Manager, Better Practice, Australian public Service Commission, *Transcript of Evidence*, 16 October 2008, pp. 1-2; Australian Public Service Commission, *Submission No. 102*, p. 2. At the APS4 level there was no difference in length of service between males and females.

41 Australian Public Service Commission, *Submission No. 102*, pp. 3-4.

42 Mr Mark Burgess, Chief Executive Officer, Police Federation of Australia, *Transcript of Evidence*, 23 October 2008, p. 2.

43 Ms Nicole Pietrucha, Group Manager, Better Practice, Australian public Service Commission, *Transcript of Evidence*, 16 October 2008, p. 12.

44 Ms Nicole Pietrucha, Group Manager, Better Practice, Australian public Service Commission, *Transcript of Evidence*, 16 October 2008, p. 2; Australian Public Service Commission, *Supplementary Submission 102.1*, p. 8.

45 Ms Nicole Pietrucha, Group Manager, Better Practice, Australian Public Service Commission, *Transcript of Evidence*, 16 October 2008, pp. 5, 15; Australian Public Service Commission, *Submission No. 102*, pp. 8-9.

Local government

- 2.27 Local government is Australia's largest employer and considerable work has been done in this sector to increase the participation of women in the workforce.⁴⁶ Twenty nine per cent of elected representatives are women, 20 per cent are professionals, and women comprise 41 per cent of the workforce.⁴⁷ The New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union attributed some of the increased proportion in the number of women working in local government to the decline in employment in some male dominated areas.⁴⁸
- 2.28 Some of the barriers to women entering local government were identified as time demands, balancing public and private life, lack of career structures and part time work in senior positions and limited training opportunities in some areas.⁴⁹ Australian Local Government Training referred to home-based work policies, flexible working hours, women on selection panels, priority childcare and support when returning from maternity leave as possible improvements.⁵⁰ Job sharing may alleviate some of this pressure.⁵¹
- 2.29 The Local Government Association of Queensland noted that there was no overt gender discrimination in terms of specific jobs but that the indoor workforce was predominantly female.⁵² The City of Whitehorse reported that vehicles were allocated to the occupations that were male dominated but this was not explicable in terms of the type of work performed.⁵³

46 Australian Local Government Training, *Women in Local Government An overview of current literature identifying the role and participation of women in Local Government*, October 2007, pp. 1-12; Local Government Association of NSW, *Submission No. 57*, pp. 1-2; Kiama Municipal Council, *Submission No. 66*, pp. 1-2; Mr Robert Wallace, Human Resources Manager, Local Government Association of South Australia, *Transcript of Evidence*, 6 November 2009, p. 50; Port Stephens Council, *Submission No. 48*, p. 1.

47 Australian Local Government Training, *Women in Local Government An overview of current literature identifying the role and participation of women in Local Government*, October 2007, p. 3.

48 The New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union, *Submission No. 140*, p. 5.

49 Australian Local Government Training, *Women in Local Government An overview of current literature identifying the role and participation of women in Local Government*, October 2007, p. 6.

50 Australian Local Government Training, *Women in Local Government An overview of current literature identifying the role and participation of women in Local Government*, October 2007, p. 8.

51 Mr Howard Oorloff, Manager, Organisation Development Department, City of Greater Geelong, *Transcript of Evidence*, 24 October 2008, p. 13.

52 Mr Tony Goode, Director, Workforce and Organisational Services, Local Government Association of Queensland, *Transcript of Evidence*, 31 March 2009, p. 37.

53 Ms Pauline Bennett, Manager, Organisation Development City of Whitehorse, *Transcript of Evidence*, 24 October 2008, p. 7.

2.30 The New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union stated that:

State award negotiations have contributed to increased gender equity in NSW local government. Indeed census data from 1986 and 2001 suggests that the gap between male and female full-time earnings was reduced in NSW local government from approximately 18.4% to 4.4%.⁵⁴

2.31 In 2004, in NSW there was a reduction in working hours for community services personnel to align with the male dominated professionals such as engineers, health and building surveyors and town planners:⁵⁵

The win marked the turning point by giving community services professionals the same level and status as professionals in male dominated areas of local government.⁵⁶

2.32 The New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union noted that ‘while some advances have been made, occupational segmentation remains very high in local government’.⁵⁷ The Australian Services Union referred to the Ergon case study in which ‘an “attraction and retention” wage increase was applied to the whole of the Technical Stream and denied to the Administrative Stream’.⁵⁸ The occupational areas which are predominantly women are secretarial/personal assistants, receptionist and general clerical, childcare and libraries.⁵⁹

2.33 Australian Local Government Training was of the view that little has changed since 1996 notwithstanding the introduction of the National Framework for Women in Local Government in 2001.⁶⁰

54 The New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union, *Submission No. 140*, p. 3.

55 The New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union, *Submission No. 140*, p. 4

56 The New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union, *Submission No. 140*, p. 5.

57 The New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union, *Submission No. 140*, p. 1.

58 Ms Jo Justo, National Industrial Officer, Australian Services Union, *Transcript of Evidence*, 31 March 2009, p. 63.

59 The New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union, *Submission No. 140*, p. 6.

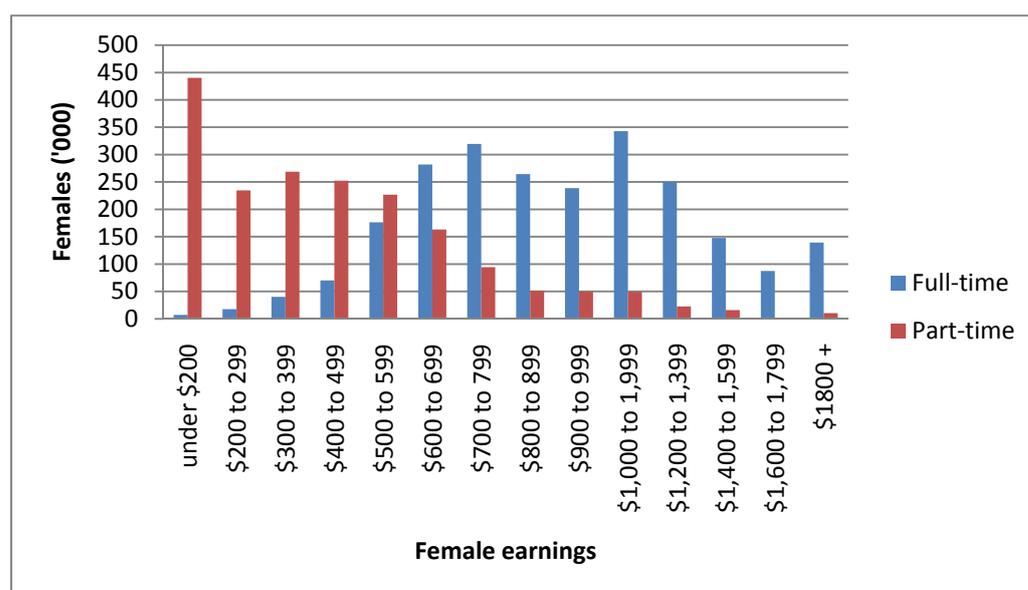
60 Australian Local Government Training, *Women in Local Government An overview of current literature identifying the role and participation of women in Local Government*, October 2007, pp. 4-5.

Trends in the gender pay gap

2.34 The Victorian Women’s Trust referred to systemic discrimination, which is indirect and therefore much harder to deal with than direct discrimination as it reflects ‘pervasive, entrenched and often unconscious values and accepted practices’ which result in women being paid less than men.⁶¹

2.35 While age and level of experience and length of years of service in the profession may have an impact in relation to pay equity, this is not found equally across the professions.⁶² Different outcomes in different professions may reflect variation in a number of factors including access to further education, nature of employment opportunities, labour market supply and demand.⁶³ An example was given of geologists having higher medium total packages because of the supply and demand factors but also the union published information for members on market rates.⁶⁴

Figure 2.9 Distribution of women’s earnings by full and part-time employment Status, August 2008



Source ABS, *Employee Earnings, Benefits and Trade Union Membership, Australia, August 2008, (6310.0)*

61 Victorian Women’s Trust, *Submission No. 123*, p. 1.

62 Ms Erin Wood, Director, Professional Services and National Women’s Coordinator, Association of Professional Engineers, Scientists and Managers Australia, *Transcript of Evidence*, 2 April 2009, p. 49.

63 Ms Erin Wood, Director, Professional Services and National Women’s Coordinator, Association of Professional Engineers, Scientists and Managers Australia, *Transcript of Evidence*, 2 April 2009, p. 50.

64 Ms Erin Wood, Director, Professional Services and National Women’s Coordinator, Association of Professional Engineers, Scientists and Managers Australia, *Transcript of Evidence*, 2 April 2009, p. 53.

Age trends

- 2.36 There is little or no gender gap for younger workers under the age of 30 with the difference manifesting later in life.⁶⁵ The participation rate of Australian women of child bearing age is ranked 20 out of 30 OECD countries.⁶⁶ The participation rate of mothers with dependent children is lower than the average rate and increases significantly with the age of the youngest child:

The participation rates for women aged 30-34 years and 35-39 years are considerably lower than those of their younger counterparts, reflecting the increased tendency for women to have children while in these child bearing age cohorts.

To illustrate, the participation rates for women aged 30-34 years and 35-39 years stood at 71.8 per cent and 71.6 per cent respectively in June 2008. Further, a considerable proportion of employed women in these cohorts work part-time (41.4 per cent and 48.5 per cent respectively) as they balance work and caring responsibilities. In this regard, it is worth noting that the participation rates for mothers in the labour force have also risen considerably over recent decades. The participation rate for all mothers in families with dependent children (aged 0-14 years) has increased significantly, from 57.1 per cent in June 1994 (earliest available comparable data) to 66.3 per cent in June 2008.⁶⁷

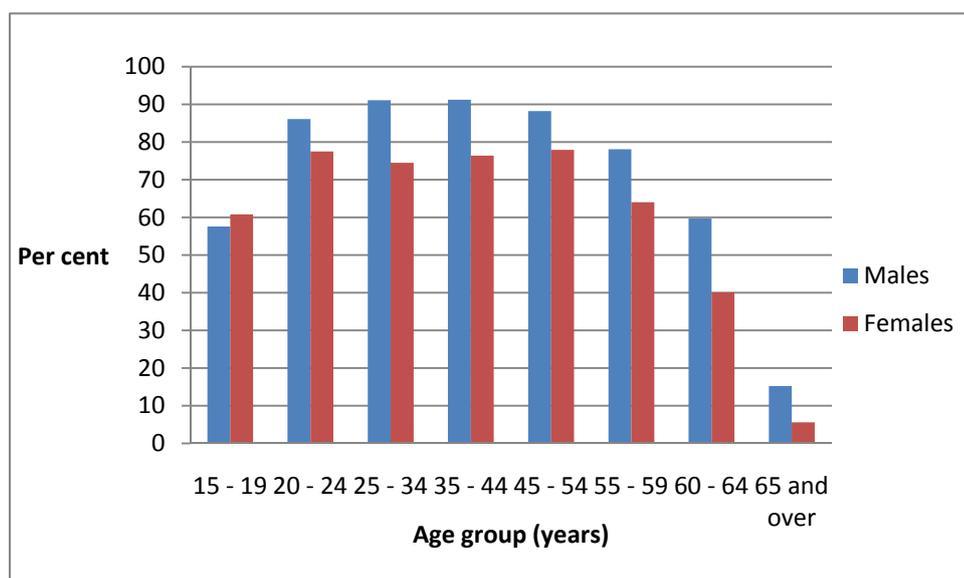
- 2.37 Work and Family Policy Roundtable stated that in 'recent years [there has also been] a sharp drop in the full-time employment participation of women after the age of 29 and a shift away from full-time employment by women aged 35-44' and noted the risks associated with part time employment in terms of poor hourly wages and casualisation.⁶⁸

65 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, p. 19.

66 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 23.

67 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 22.

68 Work and Family Policy Roundtable, *Submission No. 143*, p. 7 citing Preston A and Jefferson T, 2007, 'Trends in Australia's Gender Wage Ratio', *Journal of Labour and Industry* 18(2): 69-84.

Figure 2.10 Labour force participation rate by gender and age, March 2009⁶⁹

Source *Labour Force Australia, Detailed – Electronic delivery, March 2009. ABS (6291.0.55.001)*

2.38 Both men and women have relatively low participation rates for young people because of the number of students and for the older age groups because of retirements, health issues and or disability.⁷⁰ There is a drop in labour force participation rate for women between the ages of 20-24 years and 45-54 years relative to men. This has been attributed to caring for children, other caring and household responsibilities and the effect is more pronounced for lone mothers.⁷¹ Labour force participation for Indigenous women increases between 25 and 44 years of age but is lower overall than non-Indigenous women.⁷²

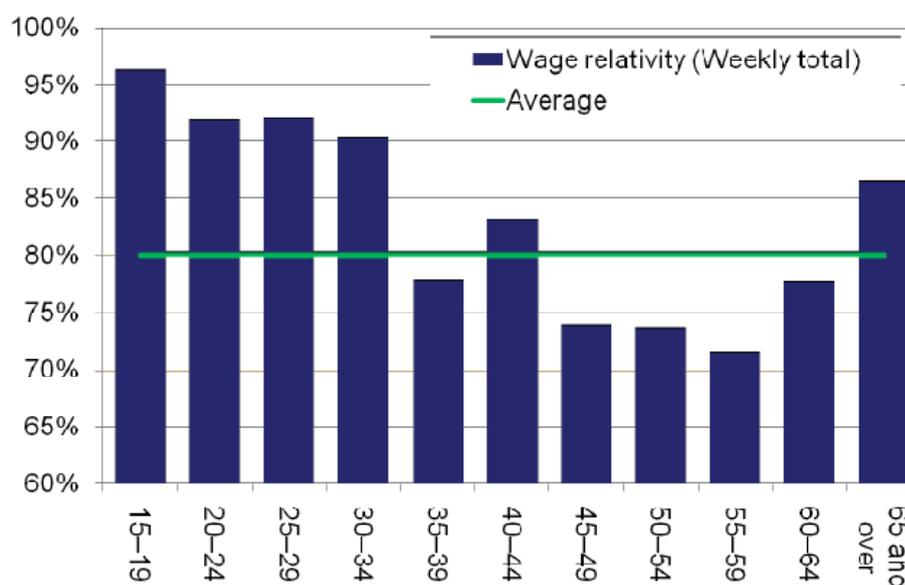
69 Australian Bureau of Statistics, 2008, *Labour Force Australia*, Cat No. 6291.0.055.001. ABS, Canberra.

70 Office for Women, 2009, *Women in Australia 2009*, Department of Families, Housing and Community Services and Indigenous Affairs, Released 19 March 2009, Chapter 3, p. 2.

71 Office for Women, 2009, *Women in Australia 2009*, Department of Families, Housing and Community Services and Indigenous Affairs, Released 19 March 2009, Chapter 3, pp. 2-3.

72 Office for Women, 2009, *Women in Australia 2009*, Department of Families, Housing and Community Services and Indigenous Affairs, Released 19 March 2009, Chapter 3 pp. 4-5 citing Australian Bureau of Statistics, *Labour force Characteristic of Aboriginal and Torres Strait Islander Australians 2007*, Cat No. 6287.0, ABS, Canberra, Table 2.

Figure 2.11 Age (2007 EEBTUM) Full time earnings in main job



Source Department of Families, Housing, Community Services and Indigenous Affairs, *Gender Earning differentials in Australia: A statistical overview of women's earnings, presentation, unpublished*

2.39 There are many older women wishing to work or working more hours and if women leave the workforce to undertake caring responsibilities or because of illness they are not returning to the work.⁷³

2.40 BPW Australia stated:

Despite laws to the contrary, I can say as a woman of 64 years that no one wants to *hire* a woman who is over 50 years old, regardless of experience, background, or education. In many ways this is illogical, as by 50 a woman usually has grown children, is more confident, has less home ties, and is more reliable. I was fortunate enough to work in my industry, in a casual position, until last year when I chose to retire, but I know so many women in the corporate world who would not be able to find another job if they were retrenched from the position that have. Yes, it is discrimination, but if a woman complains she is "sour grapes", because she wasn't good enough for the job.⁷⁴

⁷³ Associate Professor Siobhan Austen, *Transcript of Evidence*, 5 November 2008, p. 23.

⁷⁴ BPW Australia, *Submission No. 117*, p. 4.

- 2.41 The Sex Discrimination Commissioner commented that poverty should not be the reward for a life of caring and in Australia, poverty has a female face.⁷⁵ Research has shown that in South Australia, the most common residential arrangement for women over 65 years is living alone and 97.6 per cent are in retirement.⁷⁶ Single elderly females households have a greater risk of poverty than other household categories⁷⁷ with women comprising 73 per cent of the recipients of the single aged pension.⁷⁸

Education levels

- 2.42 Australia is ranked first in the world in terms of educational attainment⁷⁹ and women's labour force participation increases with education level. Notwithstanding women's improved educational qualifications over the last 25 years:

The fact that women's share of income stalled at 37% somewhere in the mid 1990s tells part of the story about the failure thus far to achieve an equitable distribution of economic outcomes. Further insights can be achieved by looking at the quintile-distribution of men's and women's incomes ... Women are over-represented in the lowest income quintiles and under-represented in the highest quintiles. In 2005/6, for example, 25% of women were in the bottom quintile while only 11% of women were in the top quintile. The pattern for men was opposite: 29% of men were in the top quintile and only 15% were in the bottom quintile.⁸⁰

- 2.43 Research has shown that gender equity in the distribution of income has not been achieved by increasing tertiary education rates.⁸¹ The New South Wales Office for Women's Policy concluded that:

Where gender pay differentials affect decisions regarding how to share work and care ..., it is ... arguable that the investment made in women's human capital in Australia is failing to be fully

75 Commissioner Elizabeth Broderick, Sex Discrimination Commissioner, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, pp. 5, 10.

76 Ms Debra King, *Mapping the Life-Course Experiences of SA Men and Women in the Labour Market*, Workforce Development Consortium, National Institute of Labour Studies, Flinders University, May 2007, pp. 19, 26.

77 Commissioner Elizabeth Broderick, Sex Discrimination Commissioner, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, p. 5.

78 Ms Somali Cerise, Senior Policy and Research Officer, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, p. 13.

79 World Economic Forum, 2009, *The Global Gender Gap Report*, p. 63.

80 Associate Professor Siobhan Austen, *Submission No. 126*, pp. 2-3.

81 Associate Professor Siobhan Austen, *Transcript of Evidence*, 5 November 2008, p. 15.

captured. While Australia performs well in educating young women, keeping those skills within the labour market is more difficult. According to the World Economic Forum's 2008 Gender Gap Index, out of 130 countries Australia ranked number 1 on women's educational attainment, but number 40 on women's labour force participation. This represents a significant leakage of resources from the formal Australian economy.⁸²

- 2.44 The National Institute of Labour Studies commented that women on average have higher levels of education than men with more degrees, diplomas and advanced diplomas.⁸³ Women's increased level of education has not been reflected in equality in earnings and career progression:

Women ... are participating in higher education in greater numbers than men and are higher performers in many areas, (to the extent some claim boys are now unduly disadvantaged) and yet pay inequity still persists at the professional/executive level as well as in low paid jobs.⁸⁴

- 2.45 Women have fewer years of labour force experience and fewer years of job tenure but there is not much difference in the mean number of years:

there are unobservables, as economists would say, in the package of skills and abilities that men bring to a job that is tied up with their working longer hours, gaining on-the-job experience and getting preferential treatment for the formalised on-the-job training that entrenches their advantage. Women swim upstream, as American researchers have said, in trying to equalise those differences. I am not willing to dismiss it entirely on the basis of formal qualifications, but it could be that it is the field of education that matters and that there will be differences within broad post-secondary qualifications that are not detected in this analysis that might contribute to explaining why the premium for highly skilled men over lower skilled men is greater than is the case for women.⁸⁵

- 2.46 The National Centre for Vocational Education Research commented that in relation to the equity of certificates which match skills levels:

82 New South Wales Office for Women's Policy, *Submission No. 153*, p. 13 citing World Economic Forum, 2008, *The Global Gender Gap Report*, p. 38.

83 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, pp. 6-7.

84 Australian Education Union, *Submission No. 76*, p. 7.

85 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, pp. 13-14.

That does not really mean that these things equate through to the labour market, because typically what will happen is that people will get paid what the labour market thinks they are worth, and that is obviously affected by things like supply and demand, the extent to which that occupation is regulated and so on.⁸⁶

- 2.47 The example was given of a building boom where electricians can demand higher wages but nurses work in a government funded sector where wages are regulated.⁸⁷ Many nurses are still on award conditions particularly in the aged care sector which is about \$250 per week lower than those working in a comparable sector.⁸⁸
- 2.48 The lowest levels of participation in the paid workforce and the lowest continuity of employment are women with no post school education.⁸⁹

Table 2.2 Labour force participation rates for women aged 15 years and above by highest level of educational attainment, 2006⁹⁰

Highest level of educational attainment	Labour force participation rates (%)
Postgraduate	83.0
Graduate diploma/certificate	82.3
Bachelor degree	79.1
Advanced diploma/Diploma	71.1
Certificate level	73.7
Year 12	64.9
Year 11	59.5
Year 10	50.6
Year 9	33.3
Year 8 and below	14.6

Source Australian Bureau of Statistics, 2006, *Census of Population and Housing*

86 Dr Thomas Karmel, Managing Director, National Centre for Vocational Education Research, *Transcript of Evidence*, 6 November 2009, p. 23.

87 Dr Thomas Karmel, Managing Director, National Centre for Vocational Education Research, *Transcript of Evidence*, 6 November 2009, p. 24.

88 Ms Geraldine Kearney, Federal Secretary, Australian Nursing Federation, *Transcript of Evidence*, 24 October 2008, p. 25.

89 Associate Professor Siobhan Austen, *Transcript of Evidence*, 5 November 2008, p. 16.

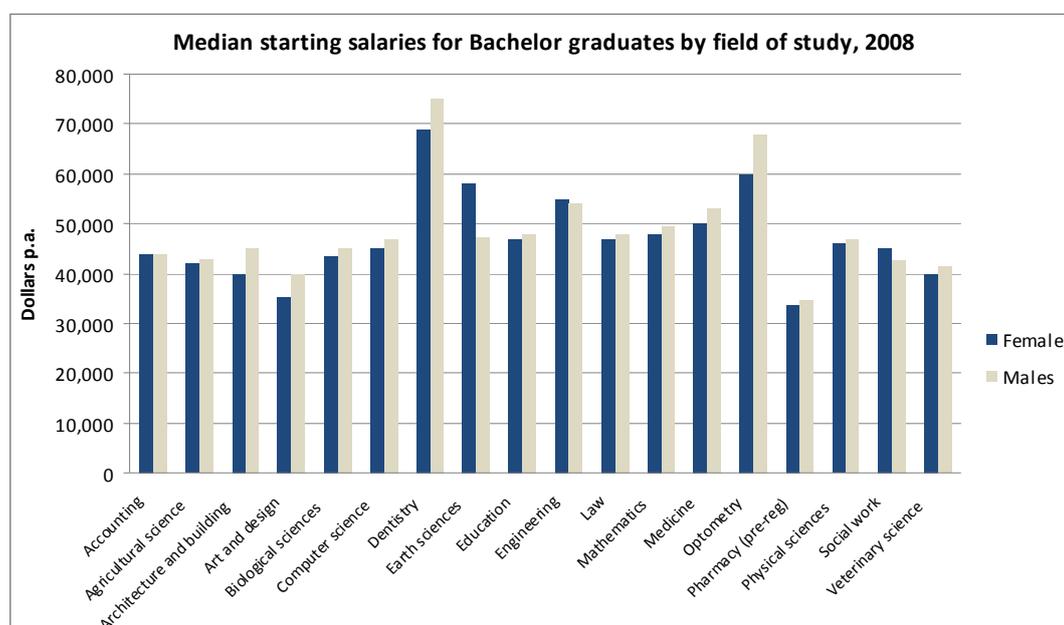
90 Office for Women, 2009, *Women in Australia 2009*, Department of Families, Housing and Community Services and Indigenous Affairs, Released 19 March 2009, Chapter 3, p. 4 citing Australian Bureau of Statistics, 2006, *Census of Population and Housing*.

University graduates

2.49 Education and professional status does not provide women with protection from pay inequity.⁹¹ In 2008, for graduates of Bachelor degrees, the median commencement salaries of females was 95.7 per cent of that for males.⁹²

Research by GradStats has shown that women graduates start their career on the back foot, earning in 2007 on average \$42,000 a year compared to \$45,000 for their male colleagues.⁹³

Figure 2.12 Median annual starting salaries for Bachelor graduates by selected fields of study and gender 2008



Source Adapted from National Centre for Vocational Education Research Ltd, Submission No. 35, Student Outcomes Survey 2007

2.50 Only in Earth Science, Engineering and Social work were women graduates paid more than their male counterparts.

2.51 In science in 2007 the gender pay gap persisted within all levels of responsibility ranging from 7.9 to 18 per cent.⁹⁴ Further, an Association of

91 Ms Noor Blumer, Chair, Equalising Opportunities in the Law Committee, Law Council of Australia, *Transcript of Evidence*, 18 June 2009, p. 2.

92 Office for Women, 2009, *Women in Australia 2009*, Department of Families, Housing and Community Services and Indigenous Affairs, 19 March 2009, Chapter 2, p. 8 citing Graduate Careers Australia, 2008, *Gradstats*, No. 13.

93 South Australian Government, Submission No. 124, p. 5 citing *GradStats* Number 12, December 2007, <<http://www.graduatecareers.com.au/content/download/3464/14502/file/%20GradStats%202007.pdf>>, p.1.

- Professional Engineers, Scientists and Managers salary survey found that the lower the median base salaries were in scientific disciplines, the higher the proportion of women working and that women were mostly at the lower responsibility level positions.⁹⁵
- 2.52 Graduate salaries for females in architecture and building were 88.4 per cent of male salaries but in computer science female salaries were 104.7 per cent of male salaries.⁹⁶
- 2.53 Equal Employment Opportunity Network of Australasia noted that teaching and nursing are highly unionised professions. Interestingly nursing was still considered a caring profession and has not been able to achieve the same pay levels as teaching.⁹⁷
- 2.54 In the legal profession the number of female law graduates exceeds the number of male graduates but men are earning \$7000 to \$8000 more than women in the first few years.⁹⁸ Women are exiting the industry earlier than men and there is a clustering of women in the lower paid end of the profession.⁹⁹ Further women barristers remain 'significantly underrepresented in court appearances, particularly at senior levels and in more complex matters' and 'women appear to continue to be significantly disadvantaged in their earning capacity and career progression as barristers'.¹⁰⁰
- 2.55 The Law Council of Australia added that:
- In 2007, 56% of Australian law graduates were women who tended to also feature disproportionately among top graduates. In terms of the demographics of the practising profession women now constitute about 38% overall of Australian legal practitioners.¹⁰¹

94 Association of Professional Engineers, Scientists and Managers, *Submission No. 121*, p. 3.

95 Association of Professional Engineers, Scientists and Managers, *Submission No. 121*, pp. 3-4.

96 Mr Mark Roddam, Assistant Secretary, Department of Education, Employment and Workplace Relations, *Transcript of Evidence*, 18 September 2008, p. 14.

97 Equal Employment Opportunity Network of Australasia, *Submission No. 85*, p. 3.

98 Ms Noor Blumer, Chair, Equalising Opportunities in the Law Committee, Law Council of Australia, *Transcript of Evidence*, 18 June 2009, p. 2.

99 Ms Noor Blumer, Chair, Equalising Opportunities in the Law Committee, Law Council of Australia, *Transcript of Evidence*, 18 June 2009, p. 4.

100 The Victorian Bar, *Submission No. 141*, pp. 11, 13.

101 Law Council of Australia, *Submission No. 144*, p. 6 citing Australian Broadcasting Corporation Radio National *Women in Corporate Law Firms* Law Report, 3 June 2008 transcript from <http://www.abc.net.au/m/lawreport/stories/2008/2262012.htm>.

- 2.56 Further there was a gender pay gap of 17.1 per cent between male and female median annual salaries for postgraduates in full time employment.¹⁰²
- 2.57 National Pay Equity Coalition and the Women's Electoral Lobby Australia Inc reported a study of PhD graduates where:
- Female graduates worked to a greater extent in academic teaching and in advising or mentoring students, while male graduates worked to a greater extent in undertaking research, managing and supervising others and product development ... There were no significant gender differences for the areas of knowledge used in the job.¹⁰³

Vocational Education and Training

- 2.58 A similar picture emerges with Vocational Education and Training graduates. 794 200 women were enrolled in VET courses in 2007, 47.7 per cent of students.¹⁰⁴ In 2007, women comprised 33 per cent of all apprentices and trainees in-training, largely in the areas of clerical, sales and service workers occupational groups.¹⁰⁵
- 2.59 Compared to Canada, which has a higher female participation rate than Australia, Australia was below average in terms of women with vocational related qualifications or Type B post secondary qualifications.¹⁰⁶ Associate Professor Siobhan Austen concluded that 'Australia's low female employment could be due to lack of adequate post-school educational opportunities outside the traditional university sector'.¹⁰⁷

Given that the labour market participation of women is important to both gender equity and levels of equity across groups of

102 Office for Women, 2009, *Women in Australia 2009*, Department of Families, Housing and Community Services and Indigenous Affairs, 19 March 2009, Chapter 2, p. 9 citing Australian Bureau of Statistics, *Average Weekly Earnings*, August 2008, Cat No. 6302.0, Canberra, 2008, Table 2.

103 The National Pay Equity Coalition and the Women's Electoral Lobby Australia Inc, *Submission No. 118*, p. 22 citing *The Influence of PhD Experience on Women's Academic Careers*, June 2008 Associate Professor Maryanne Dever, Associate Professor Warren Laffan *et al*, University of Queensland.

104 Office for Women, 2009, *Women in Australia 2009*, Department of Families, Housing and Community Services and Indigenous Affairs, 19 March 2009, Chapter 2, p. 10.

105 Office for Women, 2009, *Women in Australia 2009*, Department of Families, Housing and Community Services and Indigenous Affairs, 19 March 2009, Chapter 2, p. 11; see also Group Training Australia, *Submission No. 45*, p. 9.

106 Associate Professor Siobhan Austen, *Transcript of Evidence*, 5 November 2008, p. 16; Associate Professor Siobhan Austen, *Submission No. 126*, p. 8.

107 Associate Professor Siobhan Austen, *Submission No. 126*, p. 8.

women, it is important that better understandings of the opportunities for post-school education and training available for young women are developed, and that the role of these opportunities in creating employment pathways for women over the life course be fully explored.¹⁰⁸

- 2.60 In Australia, qualifications for many women's professions have been moved to the university sector such as teaching and nursing. A gender pay gap persists for recent graduates of the VET system:

When it comes to valuing work, skill descriptors in the form of competency standards yield very different pay outcomes. Under the vocational education and training (VET) system, a Certificate III is notionally aligned to a base trade level outcome yet men and women holding the same certificate level receive very different pay outcomes. So for example, in food processing, a process worker may attain a Certificate III but is unlikely to be paid the same as a metal worker with the same certificate level. What preserves and reinforces the relativities between fe/male dominated jobs are the entrenched value judgements about skill embedded in industrial awards, wage fixation systems and the attitudes and beliefs of those who implement them.¹⁰⁹

- 2.61 Pay and conditions for trades people and apprentices are regulated by the same industrial instruments. Group Training Australia (GTA) commented on the lack of logic in applying different apprenticeship percentages in trades which have the same trade rate and the different rule in relation to allowances paid.¹¹⁰ GTA made the point that in 'most instances the basic rate of pay for a tradesperson is the same regardless of whether they are working in female or male dominated occupations'.¹¹¹ There are, however, 'significant difference in the range and amount of allowances paid in male dominated industries compared to their female counterparts'.¹¹²

108 Associate Professor Siobhan Austen, *Submission No. 126*, p. 9.

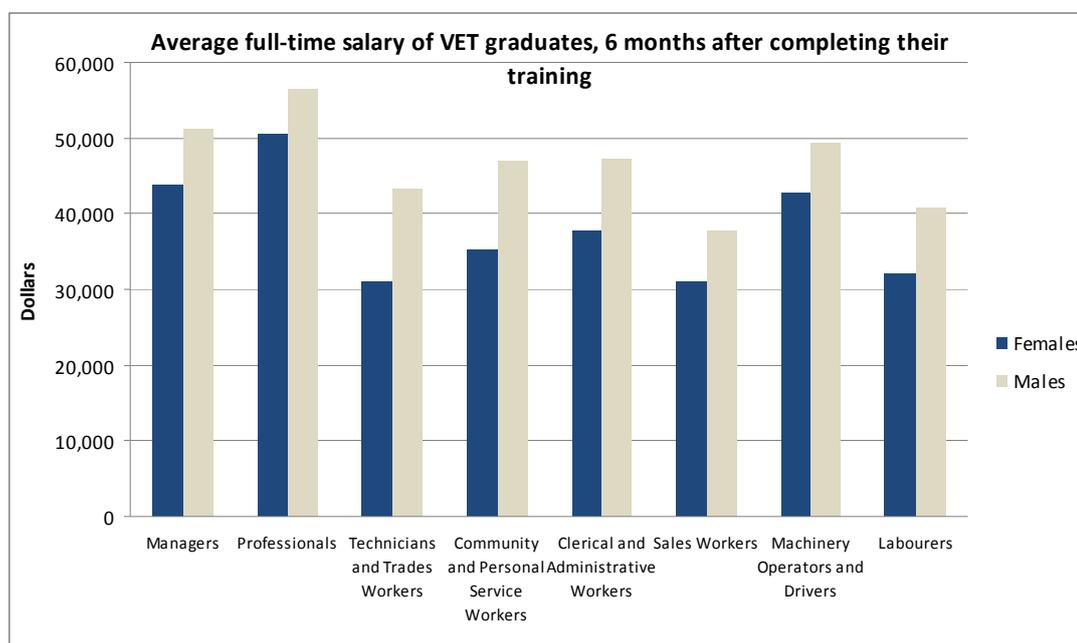
109 Victorian Women's Trust, *Submission No. 123*, pp. 2-3.

110 Group Training Australia, *Submission No. 45*, pp. 9-10.

111 Group Training Australia, *Submission No. 45*, p. 9.

112 Group Training Australia, *Submission No. 45*, p. 10.

Figure 2.13 Average full time salary of VET graduates 6 months after completing their training



Source *National Centre for Vocational Education Research Ltd, Submission No. 35, p. 13, Table 9, Student Outcomes Survey 2007*

2.62 The National Institute of Labour Studies found that ‘men and women get unequal returns to the same kinds of qualifications and if this could be addressed then half of the gender pay gap could be eliminated:

The remainder of the gender pay gap, about 0.12 of the 0.13 gap, is due to the fact that men and women receive different returns for the same observed characteristics. I have just looked at the data and I say that the differences in respect of formal qualifications are clearly very important here. To give you just one example, men with diplomas and advanced diplomas receive a wage premium over men who have completed only year 10 or below, equal to about 29 per cent. For women, the same wage premium is 16 per cent. Similar differences operate across the other types of education – it is true of bachelor degrees, it is true of certificates. Men get a very significant relative premium for getting certificate level qualifications compared with women.¹¹³

113 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, p. 7.

Women with disabilities

- 2.63 There are over two million women in Australia with a disability which is about 10 per cent of the population.¹¹⁴

Women with disabilities are less likely to be in paid work than other women, men with disabilities or the population as a whole. They are less likely than their male counterparts to receive vocational rehabilitation or entry to labour market programs, are less likely to receive a senior secondary and/or tertiary education. Women with disabilities earn less than disabled men, are in the lowest income earning bracket ...¹¹⁵

- 2.64 Women With Disabilities Australia (WWDA) made the point that:

There has been virtually no improvement in the unemployment rate and/or labour participation rate of women with disabilities since 1997, in stark contrast to the improvements made for disabled men, non-disabled men and non-disabled women in the same period.¹¹⁶

- 2.65 Seventy one per cent of women with disabilities now complete Year 10 or higher in secondary education but this success has not been reflected in employment outcomes with participation and remuneration rates lower than that for men with disabilities.¹¹⁷ Ms Susan Salthouse called for research into the employment assistance available for women with disabilities seeking work who have higher levels of education.¹¹⁸

- 2.66 WWDA also suggested the introduction of disability awareness programs in workplaces because although people do not intentionally discriminate, issues can arise through lack of awareness.¹¹⁹

Children

- 2.67 The Australasian Institute of Mining and Metallurgy listed barriers to equitable participation as:

114 Women With Disabilities Australia, *Submission No. 44*, p. 8.

115 Women With Disabilities Australia, *Submission No. 44*, p. 8.

116 Women With Disabilities Australia, *Submission No. 44*, p. 16.

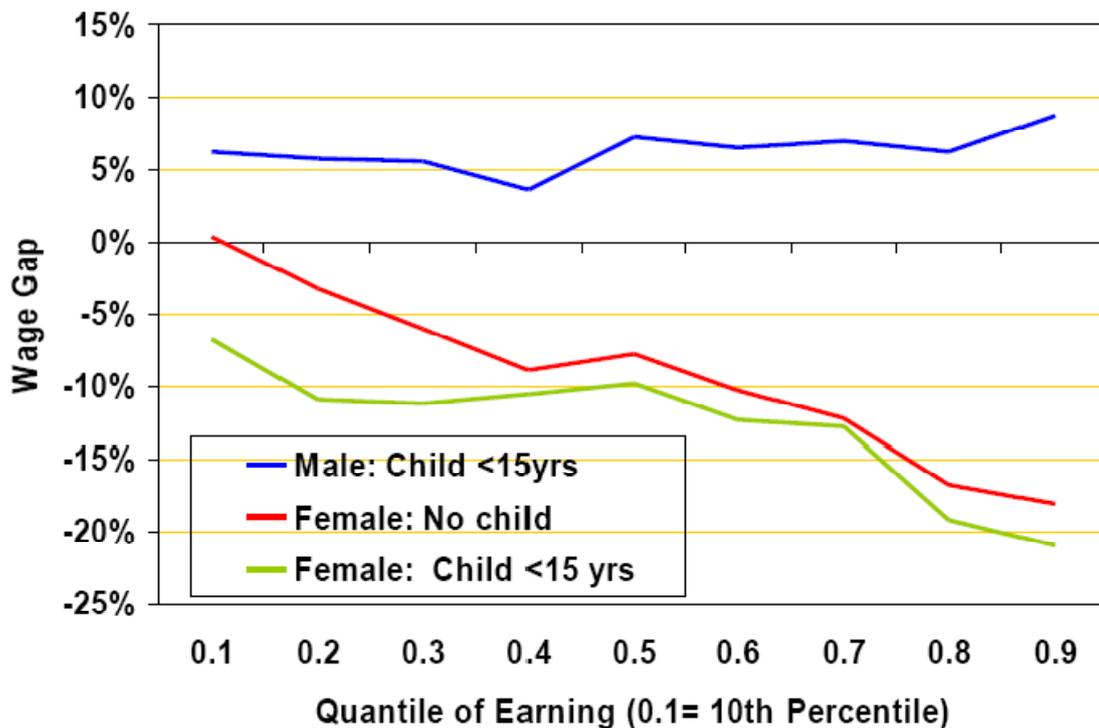
117 Women With Disabilities Australia, *Submission No. 44*, p. 16.

118 Ms Susan Salthouse, Vice-President, Women With Disabilities Australia, *Transcript of Evidence*, 4 June 2009, p. 2.

119 Ms Susan Salthouse, Vice-President, Women With Disabilities Australia, *Transcript of Evidence*, 4 June 2009, p. 4.

... lack of acceptance of flexible work practices and the tools to enable implementation of that in a credible way; the lack of systematic approaches to return-to-work arrangements after maternity and, again, the lack of tools to implement that; the gender pay gap in mining and, I suppose, in most industries and the lack of tracking of that data; the issues around informal networking and the barriers that they can pose to equitable participation; the lack of a clear understanding of just how much it impacts and of more approaches within companies to deal with that; from a policy point of view, child care not being available at the times when it is needed where it is needed and also being very costly; and, finally, the lack of consistency of the government policy and in corporate paid parental leave.¹²⁰

Figure 2.14 Earnings gap private sector Hilda Hourly Rate – Relative to male with no dependent children Quantile Regression



Source Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender Earning differentials in Australia: A statistical overview of women's earnings*, Presentation September 2008, unpublished

120 Ms Monika Sarder, Manager, Policy and Advocacy, Australasian Institute of Mining and Metallurgy, *Transcript of Evidence*, 2 April 2009, p. 59.

- 2.68 Women may 'trade off pay rates and seniority for greater flexibility to allow them to fulfil their caring responsibilities'.¹²¹ Wages are only part of the equation and other considerations such as the availability of child care must be taken into account.
- 2.69 Associate Professor Siobhan Austen suggested that Western Australia does not support women wishing to work full time because in that state men work longer hours than in the other states and women work shorter hours.¹²² Occupational segregation is crucial in understanding pay equity and part time work may be the only option available to women because of the current social structure where women undertake to majority of family responsibilities.¹²³
- 2.70 Relative to other OECD countries, a high proportion of part time and casual employees in Australia are women. The National Council of Women of Australia commented that casual employment has a negative impact on gender equality through limiting the 'development of skills, provides workers with no long-term security to plan and contributes to a wider degrading of wages and conditions'.¹²⁴
- 2.71 It has been suggested that in Australia that demographic features are less important than work factors:

Baron and Cobb-Clark, using a semi-parametric methodology to break the distribution of the gender wage gap into its separate components, found that educational qualifications and demographic characteristics are generally unimportant in explaining the gender wage gap in Australia (based on HILDA data from 2001 to 2006). Further, Grimshaw and Rubery (2007) found that workplace factors like where one works, how jobs are valued and how payment systems are designed are increasingly found to explain more of the gender pay gap than characteristics of individual employees.¹²⁵

121 Commissioner Elizabeth Broderick, Sex Discrimination Commissioner, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, p. 2.

122 Associate Professor Siobhan Austen, *Transcript of Evidence*, 5 November 2008, p. 25.

123 Associate Professor Siobhan Austen, *Transcript of Evidence*, 5 November 2008, pp. 26-27.

124 National Council of Women of Australia Inc Ltd, *Submission No. 37*, p. 4 citing May R, Campbell I and Burgess J, 2005, 'The rise and rise of casual work in Australia: Who benefits, who lose?' Paper presented to seminar on the *IR Changes Report Card*, University of Sydney, 20 June 2005.

125 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 7 citing Baron J D and Cobb-Clark, DA, 2008, *Occupational Segregation and the Gender Wage Gap in Private- and Public-Sector Employment: A Distributional Analysis*. Discussion Paper No. 3562. Institute for the Study of Labor, Bonn, Germany pp. 1, 10; and

Industries and occupations

- 2.72 Australia has the most segregated workforce in the OECD.¹²⁶ New South Wales Office for Women's Policy commented that gender segregation in the Australian workforce is a significant cause of pay inequity coupled with the undervaluation of work performed by women.¹²⁷ Social factors such as workforce choices, ability to work long hours and to seek promotion are also involved.¹²⁸
- 2.73 Work and Family Policy Roundtable observed that 'gender pay ratios vary markedly between industries, occupations and regions.'¹²⁹
- 2.74 The Australian Council of Trade Unions and the Joint State Peak Councils stated that the high level of gender segregation 'has resulted in women in female dominated occupations and industries earning up to 40% less than women in male dominated occupations and industries' and this is an increasing trend.¹³⁰ The Australian Education Union added:
- Australia exhibits one of the strongest gender segregated labour markets. Seen especially amongst what some call 'the five c's' are the female dominated low paid occupations/industries - caring, clerical, 'cashiering' (retail), cleaning, and catering. Within these low paid areas there is also a lower level of permanent employment and union membership. Without the ability to bargain collectively and with strength, these employees are heavily reliant on centralised wage fixing and are award dependant.¹³¹
- 2.75 The National Institute of Labour Studies has found:
- ... that industry structure is really important in explaining the gender pay gap. Why this should be the case is a bit of a mystery to an economist, because our models are traditionally set up in a

Grimshaw D & Rubery J, 2007. *Undervaluing women's work*. Working Paper Series No. 53, European Work and Employment Research Centre, University of Manchester, Manchester: Equal Opportunities Commission, p. viii.

126 Ms Barbara Jennings, Women's Office, Victorian Trades Hall Council, *Transcript of Evidence*, 2 April 2009, p. 78. Gender segregation in the workforce refers to the uneven distribution of women and men, and the concentration of women in certain industries and occupations.

127 New South Wales Office for Women's Policy, *Submission No. 153*, p. 14.

128 Ms Sally Moyle, Branch Manager, Office of Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Transcript of Evidence*, 25 September 2008, p. 3.

129 Work and Family Policy Roundtable, *Submission No. 143*, p. 7.

130 Australian Council of Trade Unions and Joint State Union Peak Councils, *Submission No. 125*, p. 5. See also Pocock B and Alexander M (1999). 'The Price of Feminised Jobs: New Evidence on the Gender Pay Gap in Australia', *Labour and Industry*, 10(2), pp. 75-100.

131 Australian Education Union, *Submission No. 76*, p. 7.

way that makes the assumption that what really matters is human capital differences, differences in education and experience and age and other things that flow from that. This modelling and other similar analyses tell us that the industry in which you end up working is also important independently of human capital ... if we could redistribute women into the same proportions of industries as we currently find men, then this would also make a significant inroad into closing the gender pay gap. Based on the magnitudes in our analysis, the change would be more important than other initiatives like getting more women into the higher education system or into full-time jobs. Industry structure really matters...¹³²

- 2.76 Economic growth has been in the traditionally male dominated industries.¹³³ For instance, since 2005 the mining industry has grown at a rate four per cent faster than other industries while the hospitality industry has grown at a rate three per cent slower than other industries.¹³⁴ However:

Traditionally we would expect that, with that disparity in pay, more women might volunteer to do those types of qualifications and make themselves available for highly paying jobs, but we do not see that happening.¹³⁵

- 2.77 The Australian Chamber of Commerce and Industry cautioned that there needs to be a distinction in the use of medians and trend data in comparing women's wages to men's, which does not reflect substantial changes for a small sector of the labour market:

... there have been spectacular increases in wage levels in some male-dominated industries (such as mining) that are difficult for workers across the economy to 'catch'. Wages in these industries are being driven by extreme labour market scarcities, rapid expansion of facilities and the need to attract and retain skilled employees in remote localities. Clearly, other sectors of the economy are not going to keep pace with the mining and resources sectors. To the extent that this is feeding into the gender

132 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, p. 8.

133 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, p. 15.

134 Australian Council of Trade Unions (ACTU) and Joint State Union Peak Councils, *Submission No. 125*, p. 5.

135 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, p. 16.

pay gap, it needs to be taken into account and it needs to be recognised that it is not sustainable for any policy recommendations targeted at the broader economy to attempt to chase mining sector wages.¹³⁶

Table 2.3 Gender pay gap by industry, full time adult ordinary time weekly earnings, Australia, November 2008.

	Full time adult ordinary time earnings: Females (\$)	Full time adult ordinary time earnings: Males (\$)	Percentage pay gap
Mining	1547.90	2030.30	23.8
Manufacturing	983.30	113.40	13.2
Electricity, Gas and Water Supply	1225.10	1438.10	14.8
Construction	1060.80	1205.30	12.0
Wholesale Trade	969.50	1144.30	15.3
Retail Trade	826.80	916.80	9.8
Accommodation, Cafes and Restaurants	775.10	876.80	11.6
Transport and Storage	942.30	1176.20	19.9
Communication Services	1093.90	1244.20	12.1
Finance and Insurance	1169.30	1746.10	31.9
Property and Business Services	1076.40	1415.50	24.0
Government Administration and Defence	1176.50	1269.20	7.3
Education	1163.30	1304.30	10.8
Health and Community Services	973.90	1377.40	29.3
Cultural and Recreational Services	1027.30	1236.10	16.9
Personal and Other Services	972.20	1213.00	19.9
All Industries	1032.00	1244.10	17.0

Source ABS, *Average Weekly Earnings, Australia, November 2008* cat no. 6302.0 cited in *New South Wales Office for Women's Policy, Submission No. 153, p. 6.*¹³⁷

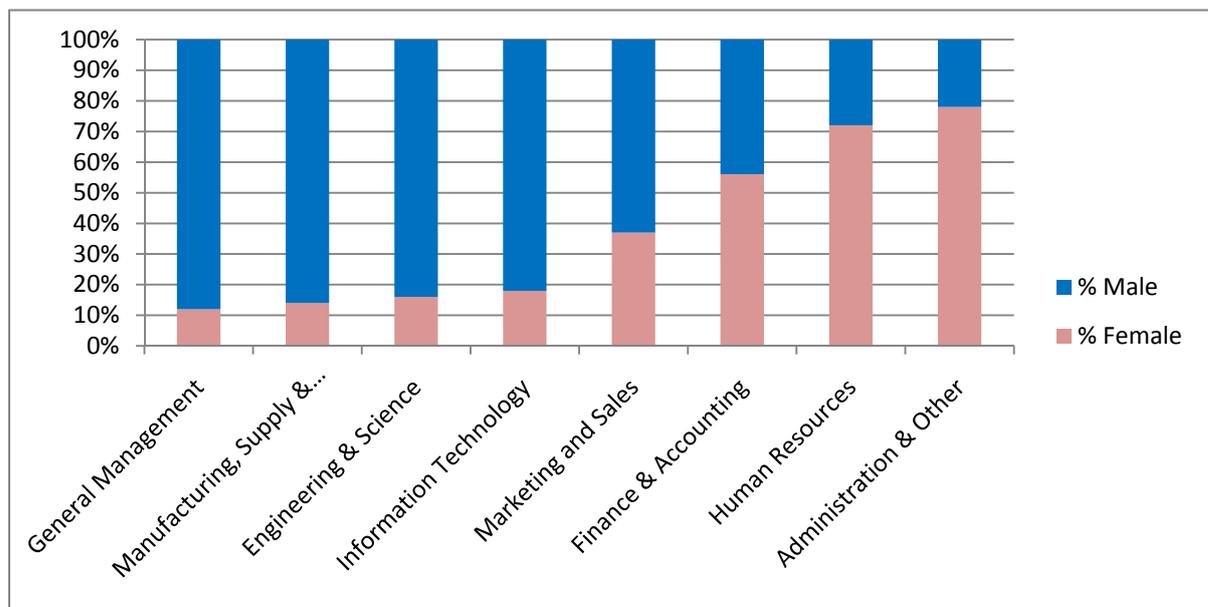
136 Australian Chamber of Commerce and Industry, *Submission No. 84*, p. 14.

137 A recent inquiry into financial services in the United Kingdom also found that the largest pay gap was in this industry. Equality and Human Rights Commission, *Financial Services Inquiry*, September 2009, p. 108.

2.78 In situations of skills shortages and if the market was working effectively, there should be less of a pay gap.¹³⁸ The Victorian Trades Hall Council added that:

In the work that we are doing, regardless of whether we are a man or a woman or whether we are working in a blue-collar industry, in a white-collar industry or as a teacher, the skills that we require to do that job have an economic value. If there is a disparity in the economic value, which clearly there is – we obviously all know that there is a huge disparity in what people are being paid – it comes back down to an assessable unit of competency. Where there are large levels of competency, there should be equal remuneration.¹³⁹

Figure 2.15 Participation rates of males and females within job families¹⁴⁰



Source Adapted from Australian Institute of Management NSW and ACT, Submission No. 51

2.79 The Australian Institute of Management found that on average females earn less than their male counterparts within all job families.¹⁴¹ Female

138 Mr Matthew Drinan, Manager, Research and HR Consulting, Australian Institute of Management New South Wales and Australian Capital Territory, *Transcript of Evidence*, 26 September 2008, p. 11.

139 Ms Barbara Jennings, Women’s Office, Victorian Trades Hall Council, *Transcript of Evidence*, 2 April 2009, p. 78.

140 Australian Institute of Management NSW and ACT, *Submission No. 51*, p. 3.

141 Australian Institute of Management NSW and ACT, *Submission No. 51*, p. 5.

participation rates were higher within the administration and human resource job families.¹⁴²

2.80 Work currently being undertaken by FAHCSIA is indicating pay gap difference in wage setting arrangements and different occupations and industries.¹⁴³

2.81 In relation to occupation and industrial segregation, the Diversity Council Australia commented that:

Women are over-represented in lower-paid industries (e.g. health, community services, service sector) and lower-paid occupations (e.g. over half of all employed women are concentrated in two occupations - clerks and sales and personal service workers), and under-represented in higher paid occupations (e.g. of the top 200 companies listed on the Australian Stock Exchange, only one CEO is a woman).¹⁴⁴

2.82 There needs to be recognition of the fact that a narrow gender pay gap may reflect relatively low increases for men rather than improved pay arrangements for women.¹⁴⁵

142 Australian Institute of Management NSW and ACT, *Submission No. 51*, p. 3.

143 Ms Sally Moyle, Moyle, Group Manager, Office of Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Transcript of Evidence*, 20 August 2009, p. 7.

144 Diversity Council Australia, *Submission No. 110*, p. 8 citing EOWA web-site. Available at: http://www.eowa.gov.au/About_Equal_Opportunity/Key_Agenda_Items/Inequities_in_Workforce_Participation.asp

145 Work and Family Policy Roundtable, *Submission No. 143*, p. 7.

Table 2.4 Gender pay gap (non-managerial adults) by occupation - hourly ordinary time rates of pay and proportions of employees (May 2006)

	Male		Female		Gender Wage Gap
	(\$)	(%)	(\$)	(%)	(%)
Managers	37.50	4	30.50	2	18.7
Professionals	36.70	18	32.20	24	12.3
Technicians and Trades	25.80	21	20.60	4	20.2
Community / Personal Service	24.60	8	20.40	17	17.1
Clerical / Administrative	25.90	11	21.80	30	15.8
Sales Workers	21.20	9	18.40	12	13.2
Machinery Operators / Drivers	23.10	14	19.10	2	17.3
Labourers	20.40	16	17.50	9	14.2
TOTAL	26.50	100	23.70	100	10.6

Source ABS *Employee, Earnings and Hours* (Cat. No.6306.0), unpublished data.¹⁴⁶

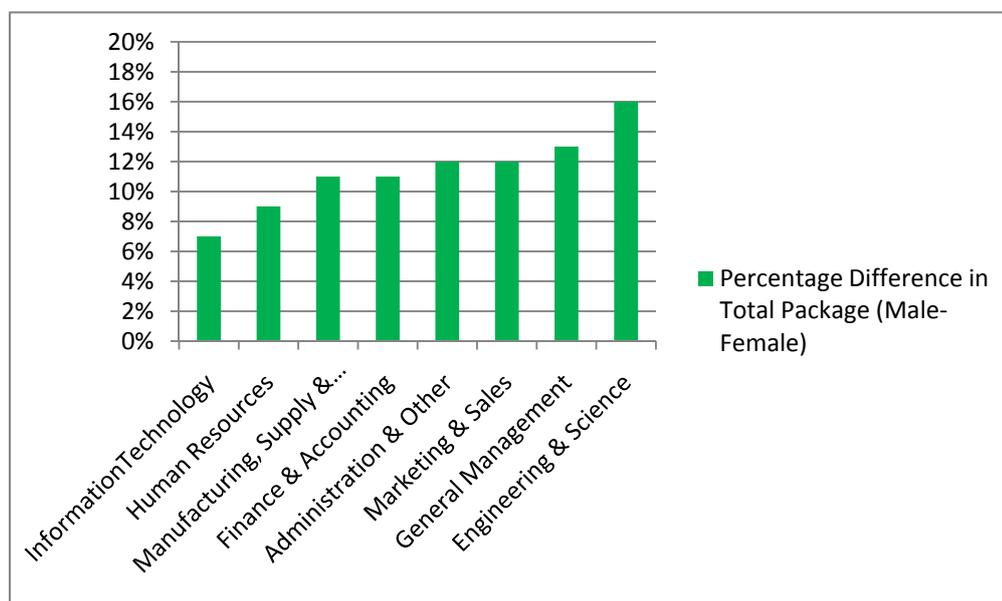
2.83 The Department of Education, Employment and Workplace Relations concluded that:

... gender pay gaps by industry ranged from 1.1 per cent for accommodation, cafes and restaurants to 24.7 per cent for Finance and insurance. Gender pay gaps were below the 'all industries' gap in only three industries. This indicates that there is also considerable labour market segmentation by industry, as there was by occupation. There is no clear relationship between the size of the gender pay gap within an industry and the proportion of employees who are women. Gender pay gaps are high in male dominated industries such as mining, construction and electricity, gas and water supply but are also high in the female dominated industries of finance and insurance and health and community services. Overall, however, gender pay gaps tend to be higher in industries where the proportion of females is smaller.¹⁴⁷

146 There is a low proportion of females in the relatively lower paid machinery operator/driver and labourer occupations. As such, the gender pay gap for all occupations is lower than it would be if males and females were evenly distributed among the occupations.

147 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 8.

Figure 2.16 Gender pay differences - The extent to which females earn less than their male counterparts in various job families.¹⁴⁸



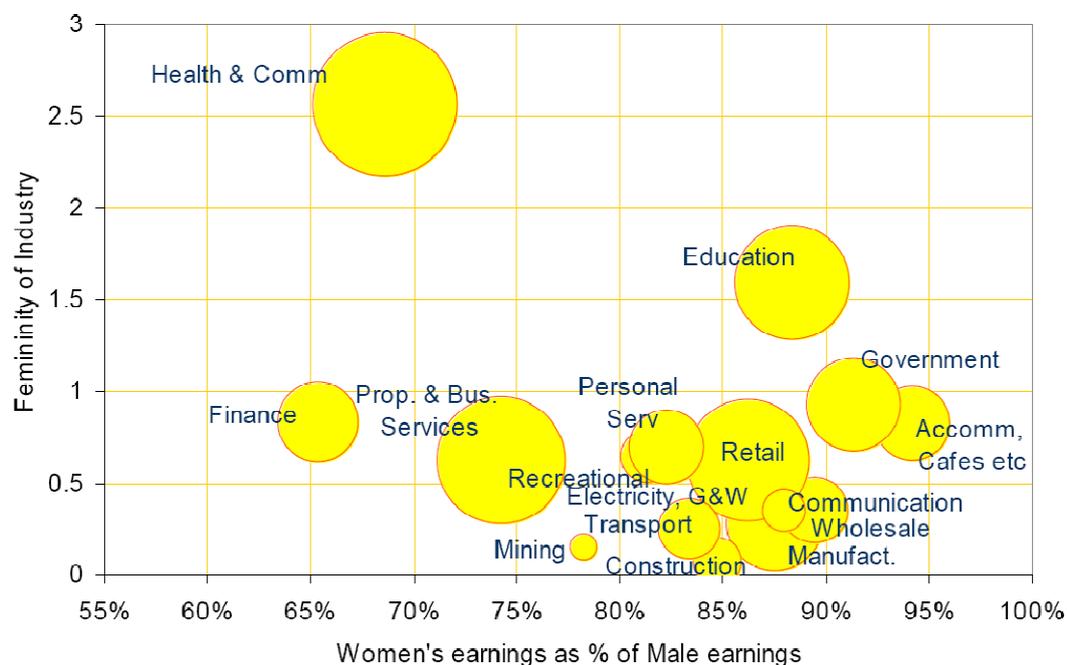
Source Australian Institute of Management NSW and ACT, *Submission No.51*, p. 5.

2.84 When all industries are considered there is a 'weakly significant negative relationship between the degree of feminisation of an industry and female earnings as a proportion of men's'.¹⁴⁹ This, however, reflects the impact of the health and community services industry (discussed below).

148 Australian Institute of Management NSW and ACT, *Submission No. 51*, p. 5.

149 Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender Earning differentials in Australia: A statistical overview of women's earnings*, unpublished p. 14.

Figure 2.17 Gender earnings by industry, gender earnings relativity and degree of feminisation of workforce, November 2007¹⁵⁰ Average Weekly Earnings Full time adult ordinary time earnings



Source Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender Earning differentials in Australia: A statistical overview of women's earnings*, unpublished p. 14.

2.85 The Queensland Government found that:

... industries with high female employment in Australia exhibit similar characteristics including: a high level of award only coverage; high levels of part-time work; low levels of unionisation and low levels of hourly earnings. These industries are accommodation, cafes and restaurants (58.3% women); cultural and recreational services (50.5% women); health and community services (78.6% women); personal and other services (47% women) and retail trade (51.4% women).¹⁵¹

2.86 Further, in Victoria it has been found that:

... those with relatively poor wages and conditions ... have had very short promotion ladders and provided only limited access to

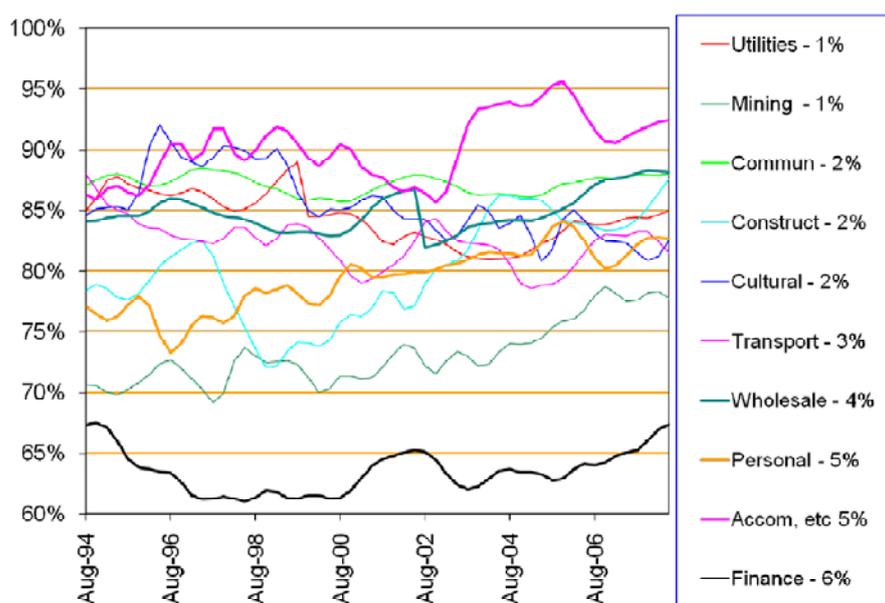
150 The size of the bubbles represents the number of women employed in the industry sector. Source ABS 6302.0 Tables 10A, 10D, Average weekly earnings, Industry, Australia (Dollars) Original Males, Females, Full-time Adult Ordinary Time Earnings, ABS 6291.0.55.003 E05_Aug 94, Employed Persons by Sex, Industry, Age, Status in Employment.

151 Queensland Government, 2006, *Progressing Pay Equity – An Inquiry* Submission to the Queensland Industrial Relations Commission, p. 19 cited in Australian Education Union, *Submission No. 76*, p. 22.

human capital enhancing training and education. The early employment experiences of many women may thus be a major factor inhibiting their labour market activities over their lifetimes. To the extent that these are reflected in gender earnings differentials, the occupational segregation of young women may be an important contributor to the maintenance of the gender earnings gap.¹⁵²

- 2.87 Western Australia has the higher gender pay gap and is also the State with the highest degree of industry segregation.¹⁵³ The sectors with the highest pay gaps are health and community services, property and business services, finance and insurance and the retail trade.¹⁵⁴

Figure 2.18 Female earnings as a percentage of male earnings by industry with the percent of female employment shown in the legend (Full time adult ordinary time earnings).



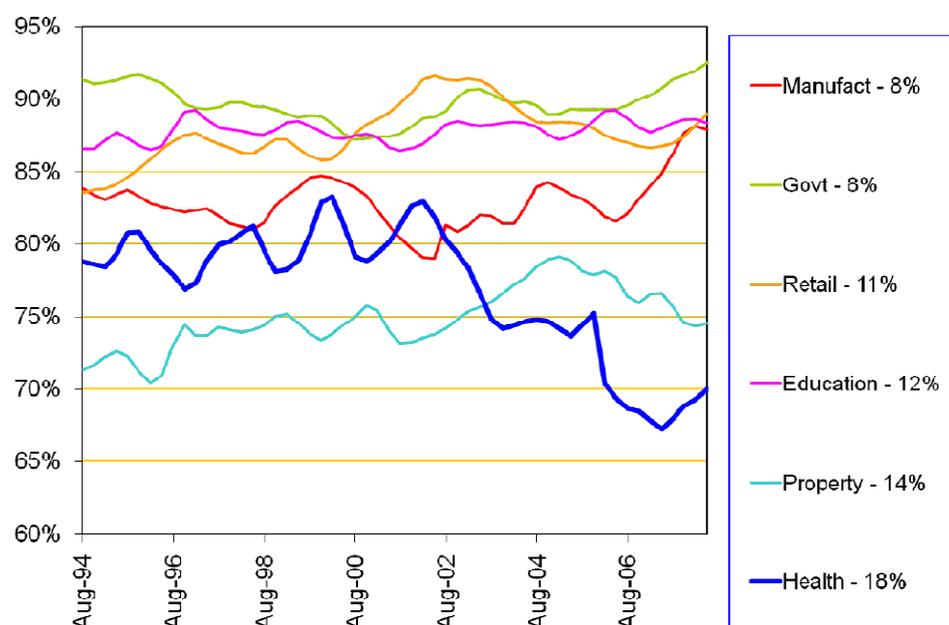
Source Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender Earnings differentials in Australia: A statistical overview of women's earnings*, unpublished presentation, September 2008.

152 Whelan D, 2005, *Advancing Pay equity – their future depends on it*. Report by the Victorian Pay Equity Working Party to the Minister for Industrial Relations, February 2005, p. 4 cited in Australian Education Union, *Submission No. 76*, p. 22.

153 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 5.

154 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 5.

Figure 2.19 Female earnings as a percentage of male earnings by major industry (Female full time adult ordinary time earnings as a percentage of male, Percent of female employment shown in legend).



Source Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender Earnings differentials in Australia: A statistical overview of women's earnings*, unpublished presentation, September 2008.

2.88 The Office for Women commented that:

These “women's jobs” were historically assigned a lower value in terms of skill requirements and remuneration. Developments in job evaluation have demonstrated that many jobs conventionally occupied by women require levels of skills, responsibilities, task variation, and complexity similar to higher-paid jobs conventionally held by men.¹⁵⁵

This undervaluation of women's skills reflects a range of social, historical and industrial factors that have interfered with objective assessment of women's work. For example, women's skills are often viewed as natural attributes or social skills, rather than industrial or workplace skills. In addition, the criteria used by industrial tribunals to determine the value of work performed, in

155 Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Submission No. 112*, p. 11 citing *Equal Employment Opportunity for Women in the Workplace, Occupational Segregation*, James Cook University, http://www.jcu.edu.au/eo/women/JCUDEV_012168.html.

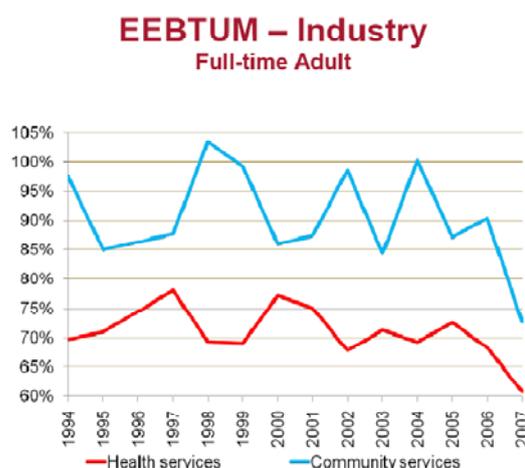
some cases have tended to assign more worth to features that are characteristic of work performed predominantly by men.¹⁵⁶

2.89 Figure 2.19 shows that the health and community services which has a predominantly female workforce and there is a different trend than the other major industries which a decline in female earnings relative to males. Further, preliminary research by the Department of Families, Housing, Community Services and Indigenous Affairs has shown that different patterns are emerging in relation to the EEBTUM surveys in terms of industry and occupations (Figures 2.20-2.21).

2.90 New South Wales Office for Women's Policy commented that:

Current data shows that women make up 76% of clerical and administrative workers and 70% of community and personal service workers. Conversely, women comprise 34% of managers and 14% of technicians and trades workers.¹⁵⁷

Figure 2.20 Employee Earnings, Benefits and Trade Union Membership Survey based on industry (Full Time adult earnings)

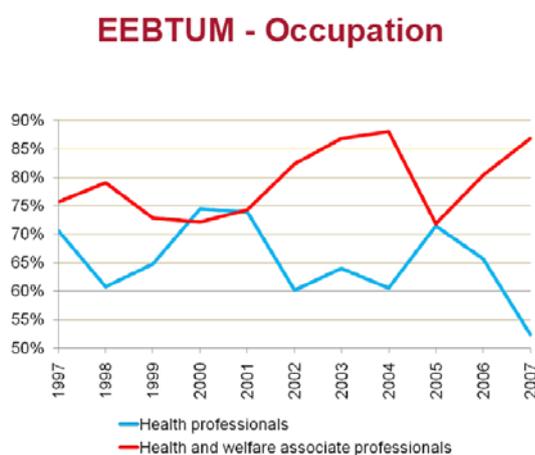


Source Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender Earnings differentials in Australia: A statistical overview of women's earnings*, unpublished presentation, September 2008

156 Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Submission No. 112*, p. 11 citing Department of Commerce, Office of Industrial Relations, NSW, *Work and Family*.
<http://www.workandfamily.nsw.gov.au/payequity/gap.html>

157 New South Wales Office for Women's Policy, *Submission No. 153*, p. 15 citing Industrial Relations Commission of NSW, *Pay Equity Inquiry, Report to the Minister (Matter No. IRC6320 of 1997)*, Volume 2, p. 267.

Figure 2.21 Employee Earnings, Benefits and Trade Union Membership Survey (Full Time adult earnings) based on occupation



Source Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender Earnings differentials in Australia: A statistical overview of women's earnings*, unpublished presentation, September 2008

2.91 Women in engineering, science and information technology, believed the median remuneration level was lower than for men with the same level of responsibility.¹⁵⁸ Further the New South Wales Office for Women's Policy made the point that:

... the majority of full time female employees are located in the industry sectors of health care and social assistance, education and training, retail trade, public administration and safety, and professional, scientific and technical services (a total of approximately 56% of all female full time employees). There are also a disproportionate number of part time female employees in the health care and social assistance, retail trade, accommodation and food services and education and training sectors, amounting to approximately 61% of all female part time employees.¹⁵⁹

2.92 These industries are predominantly female and the skills 'stereotypically labelled "female" include 'those relating to caring, communications and personal interaction (such as required for customer service) and aptitude for domestic labour associated with the accommodation/hospitality sector':

These skills have been systematically undervalued when compared to skill sets associated with work performed in male dominated industries such as transport and manufacturing. In

158 Association of Professional Engineers, Scientist, Managers, Australia, *Submission No. 121*, p. 11.

159 New South Wales Office for Women's Policy, *Submission No. 153*, p. 15.

some female dominated industries, this has meant that the work has been undervalued on a gender basis.¹⁶⁰

Table 2.5 Female employment density by industry, Australia, February 2009

Industry	Industry composition: % female	% full time female labour force	% part time female labour force
Health care and social assistance	79.9	18.23	19.75
Education and Training	69.7	11.35	10.26
Retail trade	57.1	10.15	19.09
Accommodation and food services	56.2	5.11	11.68
Financial and insurance services	54	6.13	2.18
Administrative and support services	53.8	3.49	4.39
Rental, hiring and real estate services	50.5	2.09	1.46
Public administration / safety	46.8	8.71	3.41
Arts / recreational services	46	1.57	2.51
Other services	44.1	3.96	4.11
Professional, scientific and technical services	43.9	8	5.48
Information media / telecommunications	43.5	2.68	1.13
Agriculture, forestry / fishing	31.6	2.03	2.77
Wholesale trade	31.2	2.9	2.02
Manufacturing	26.8	7.12	3.56
Transport, postal / warehousing	24.6	3.16	2.75
Electricity, gas / water supply	20.3	0.91	*0.26
Mining	12.7	0.65	*0.16
Construction	11.5	1.75	3.03

Source Australian Bureau of Statistics, *Australian Labour Market Statistics, February 2009, cat no 6105.0, Table 2.4, p. 50 (adapted)*¹⁶¹

160 New South Wales Office for Women's Policy, *Submission No. 153*, p. 15.

161 New South Wales Office for Women's Policy, *Submission No. 153*, p. 15 citing Industrial Relations Commission of NSW, *Pay Equity Inquiry, Report to the Minister (Matter No. IRC6320 of 1997)*, Volume 2, p. 267.

2.93 The difference is attributed to the fact that:

...various structural forms of discrimination exist for these women at the top, such as workplace practices that involve a mix of subjective performance evaluations, biased remuneration schemes, lack of mentors, and the all pervasive 'boys' network.¹⁶²

2.94 There is a need to redefine skills that are called 'personal attributes and aspects of performance', the types of skills acquired through experience.¹⁶³ Work currently being done in New Zealand is tracking levels of skills:

We have itemised nine particular under-recognised areas of skill and we have a big catalogue of activity descriptors whereby these skills can be recognised. That is now being used. We are just starting to roll it out in areas like the community sector, and using it to look at the identification of the skills of community sector workers. The New Zealand process is one whereby you can incorporate the outcomes of pay equity audits into multi-employer collective agreements or into single employer collective agreements for that matter.¹⁶⁴

2.95 The National Pay Equity Coalition and the Women's Electoral Lobby Australia Inc listed three key strategies to adopt in Australia as:

a focus on the factor of gender occupational and industry segregation has given rise to educational and employment strategies to encourage women into non-traditional jobs and industries, and strategies to encourage and support women into management and executive roles within their organisations.

a focus on the undervaluation of skills in the kinds of work that most women do has given rise to strategies to change the way the industrial relations system values women's work, at the occupational and industry level.

a focus on the differential impact of awards and collective enterprise agreements on women has yielded strategies to ensure minimum award rates are maintained at an adequate level, and strategies to challenge the development of a system where pay

162 National Council of Women of Australia Inc Ltd, *Submission No. 37*, p. 5 citing Roth L, 2006, *Selling Women Short – Gender and money on Wall Street*, Princeton University Press.

163 Dr Anne Junor, *Transcript of Evidence*, 26 September 2008, p. 63.

164 Dr Anne Junor, *Transcript of Evidence*, 26 September 2008, p. 64.

increases are mainly achieved through enterprise or individual bargaining.¹⁶⁵

2.96 The NSW Office for Women commented that:

We recognise that different factors are likely to drive gender pay differentials in different parts of the labour market, and have instituted a broad range of policy responses to address these factors.¹⁶⁶

2.97 UnionsWA suggest that an investigation of the industries with the large pay gaps could assist in the identification of the underlying causes, and the remedies and strategies that could be implemented to address this.¹⁶⁷ Further the government provides assistance to many industry sectors and is therefore in a position to influence best practice.¹⁶⁸

The issue of continued gender wage inequality undermines fundamental values in our society which deems that discrimination is intolerable and unlawful. Failure to take measures to redress gender wage inequality ignores discrimination which not only results in Australia's economic loss but comes at a personal economic and social cost to women and their equal sharing of the benefits of our society.¹⁶⁹

165 The National Pay Equity Coalition and the Women's Electoral Lobby Australia Inc, *Submission No. 118*, p. 10.

166 New South Wales Office of Women's Policy; *Submission No. 153*, p. 5.

167 Ms Simone McGurk, Assistant Secretary, UnionsWA, *Transcript of Evidence*, 5 November 2008, p. 34.

168 Ms Simone McGurk, Assistant Secretary, UnionsWA, *Transcript of Evidence*, 5 November 2008, p. 34.

169 Community and Public Sector Union State Public Services Federation Group, *Submission No. 107*, p. 24.

International perspective

3.1 Predictably many of the aspects evident in Australia reflect the global experience. The European Commission has identified the pay gap as increasing with age, years of service and education and listed the following six categories as contributing factors:

- personal characteristics – age, education, job tenure, children, labour market experience;
- job characteristics – occupation, working time, contract type, job status, career prospects and working conditions;
- firm characteristics – sector, firm size, recruitment behaviour, work organisation;
- gender segregation by occupation sector;
- institutional characteristics – education and training systems, wage bargaining, industrial relations, parental leave arrangements and provision of childcare; and
- social norms and traditions – education, job choice, career patterns and evaluation of male and female dominated job roles.¹

3.2 Globally there has been some success in reducing the gender pay gap in industrialised countries over the last forty years and this has been attributed to factors such as 'women gaining more work experience with fewer labour market interruptions; increasingly gaining more labour market oriented education; technological change which has led to a relative devaluation of physical strength; an increased demand for white

¹ Commission of the European Communities (2007) Communication from the Commission: *Tackling the Pay Gap between Women and Men*, Brussels 18 July 2007, p. 16.

collar workers'; increased global competition; and the introduction of anti-discrimination legislation.²

- 3.3 The World Economic Forum's *Global Gender Gap Report* includes an international comparison based on the Global Gender Gap Index to benchmark global gender-based inequalities on economic, political education and health-based criteria The International Trade Union Confederation described:

The economic component of the Index covers the participation gap, which is the difference in labour force participation rates, the remuneration gap and the gap between the advancement of women and men, based on the ratio of women to men among legislators, senior officials and managers and the ratio of women to men among technical and professional workers.³

- 3.4 A major initiative in the promotion of public awareness of women's participation in the workforce and pay equity is the International Labour Organisation's 2009 *Gender Equality at the Heart of Decent Work* campaign which aims to:

- increase general awareness and understanding of gender equality issues in the world of work;
- highlight the specific linkages between gender equality and securing decent work for all women and men; and
- advocate the importance of overcoming existing barriers to gender equality as beneficial for all.⁴

- 3.5 The following chapter sets out how Australia is faring in relation to other comparable countries in dealing with issues of the gender pay gap and female participation in the workforce. It then describes some of the measures in place in these countries to deal with these issues focusing particularly on experiences in the United Kingdom, New Zealand and Canada. Finally, Australia's international obligations to report on address

2 Weichselbaumer D and R Winter-Ebmer, 2007, 'The effects of competition and equal treatment laws on gender wage differentials', *Economic Policy* 22(4): p. 238. International Trade Union Confederation, *The Global Gender Pay Gap*, September 2007, pp. 50-51. The ITUC, however, cautioned that there is a lack of internationally comparable earnings data and cautioned that international comparisons use data from countries that use different measures to calculate the gap. Differences can result from the use of hourly, weekly, monthly or annual remuneration rates; sample size or occupation classifications.

3 International Trade Union Confederation, *The Global Gender Pay Gap*, September 2007, p. 49 citing Chicha M T (2006) *A comparative analysis of promoting Pay Equity: Models and Impacts*, p. 5.

4 International Labour Organization, at <<http://www.ilo.org/gender/Events/Campaign2008-2009/lang--en/index.htm>>.

and address matters arising in the areas of pay equity and female participation in the workforce are considered.

The Australian scene

- 3.6 Internationally Australia is ranked 13th of the 30 OECD countries in terms of estimated earned incomes.⁵ In terms of female participation in the labour force Australia was 40th of the 130 countries globally in 2008, up from 41st in 2007 and is 50th in 2009.⁶ On wage equality for similar work, Australia ranked 60th globally in 2009, 77th in 2008, but down from 51st in 2007.⁷ In terms of women's economic participation and opportunity Australia has slipped from 12th to 22nd globally over the year from 2007 to 2008 and in 2009 was 19th.⁸
- 3.7 The New South Wales Office for Women's Policy commented that:
- Australia fares poorly by international standards with the workforce participation rate for women of child-bearing age ranked twenty third out of thirty OECD countries. Moreover, the proportion of Australian working women aged 15-64 who work part time (51.5 %) is well above the OECD average (33 %).⁹
- 3.8 Up until 2002, the gender pay gap in Australia was smaller than in many other comparable countries.¹⁰ The gender pay gap was 'commensurate with the average across OECD countries, and it has followed a similar

5 World Economic Forum, 2009, *The Global Gender Gap Report*, p. 63; World Economic Forum, 2008, *The Global Gender Gap Report*, p. 43.

6 World Economic Forum, 2009, *The Global Gender Gap Report*, p. 63; World Economic Forum, 2008, *The Global Gender Gap Report*, p. 43; World Economic Forum, 2007, *The Global Gender Gap Report*, p. 38.

7 World Economic Forum, 2009, *The Global Gender Gap Report*, p. 63; World Economic Forum, 2008, *The Global Gender Gap Report*, p. 43; World Economic Forum, 2007, *The Global Gender Gap Report*, p. 38.

8 World Economic Forum, 2009, *The Global Gender Gap Report*, p. 63; World Economic Forum, 2008, *The Global Gender Gap Report*, p. 43; World Economic Forum, 2007, *The Global Gender Gap Report*, p. 38.

9 New South Wales Office for Women's Policy, *Submission No. 153*, pp. 12-13 citing Australian Bureau of Statistics, Labour Force cat. No. 6202.0.55.001, Time Series December 1986-2008; Productivity Commission Annual Report 2006-2007, Annual Report Series, Canberra 2007, p. 7; Abhayatna J, Andrews L, Nuch H and T Podbury, 2008, *Part time Employment: the Australian Experience*, Productivity Commission Staff Working Paper, pp. 79-80.

10 OECD Employment Outlook Paris 2002, p. 95. Belgium has a six per cent wage gap and Australia is second.

trajectory over time'.¹¹ On average in OECD countries there was a 17 per cent gender pay gap and this had contracted between the 1960s and 1990s¹² largely due to educational attainment and labour market experience. However, there was little evidence of further narrowing of the gender pay gap between 1994 and 2001. Internationally, the OECD identified the following key factors as relating to the gender pay gap:

- (i) discrimination in the labour market;
- (ii) educational attainment and labour market experience explain only a small portion of the gender pay gap;
- (iii) labour market segmentation by occupation, type of contract, industry, firms and establishments explain a larger share of the gender pay gap but, more than 50 per cent of the pay gap remains unexplained;
- (iv) even when using the broadest range of potential explanatory characteristics possible (such as education, experience, occupation, motivation, expectations, and field of study) one-fourth of the gender pay gap remains unexplained;
- (v) the unexplained share of the gender pay gap appears to have increased over time.¹³

Table 3.1 Gender Gap Index (Australia)

	2006	2007	2008
Gender Gap Index rank	15 (out of 115 countries)	17 (out of 128 countries)	21 (out of 130 countries)

Source World Economic Forum, *Global Gender Gap Reports 2006;2007; and 2008*.

11 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 4. The OECD defines discrimination in the labour market as a situation in which persons who provide labour market services and who are equally productive are treated unequally because of their gender.

12 Unweighted average based on the latest data for OECD countries over the period 1997-2006.

13 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 4.

Table 3.2 Gender Gap Subindexes – Economic Participation and Opportunity (Australia)

	2006			2007			2008		
	Rank	Female	Male	Rank	Female	Male	Rank	Female	Male
Labour Force Participation	12	56%	71%	41	67%	81%	40	68%	81%
Legislators, senior officials and managers	14	36%	64%	13	37%	63%	23	38%	62%
Professional and technical workers	1	55%	45%	1	55%	45%	1	56%	44%
Wage equality	-	-	-	51	-	-	77	-	-
Earned income	-	-	-	13	24958	35832	13	26311	37414
Economic participation and opportunity	-	-	-	12	-	-	22	-	-

Table 3.3 Gender Gap Subindexes – Political Empowerment (Australia)

	2006			2007			2008		
	Rank	Female	Male	Rank	Female	Male	Rank	Female	Male
Women in Parliament	22	25%	75%	28	25%	75%	27	27%	73%
Women in ministerial positions	30	20%	80%	30	20%	80%	30	24%	76%

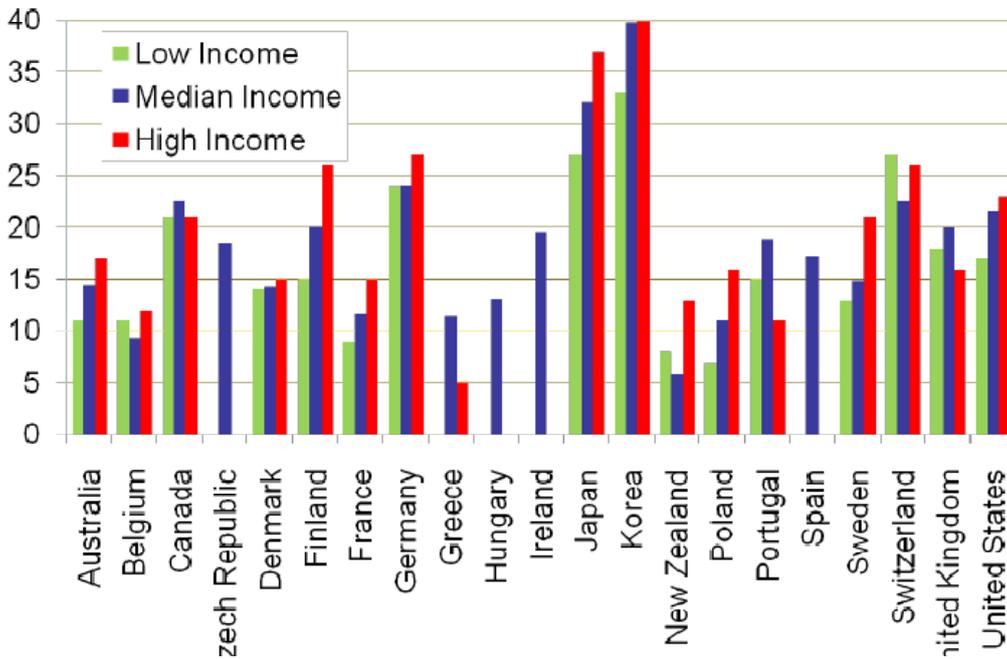
Table 3.4 Gender Gap Subindexes – Educational Attainment (Australia)

	2006			2007			2008		
	Rank	Female	Male	Rank	Female	Male	Rank	Female	Male
Literacy rate	1	99%	99%	1	99%	99%	1	99%	99%
Enrolment in primary education	1	96%	96%	1	96%	96%	1	97%	96%
Enrolment in secondary education	1	86%	85%	1	86%	85%	1	88%	87%
Enrolment in tertiary education	1	80%	65%	1	80%	65%	1	82%	64%

Source World Economic Forum, *Global Gender Gap Reports 2006;2007; and 2008*.

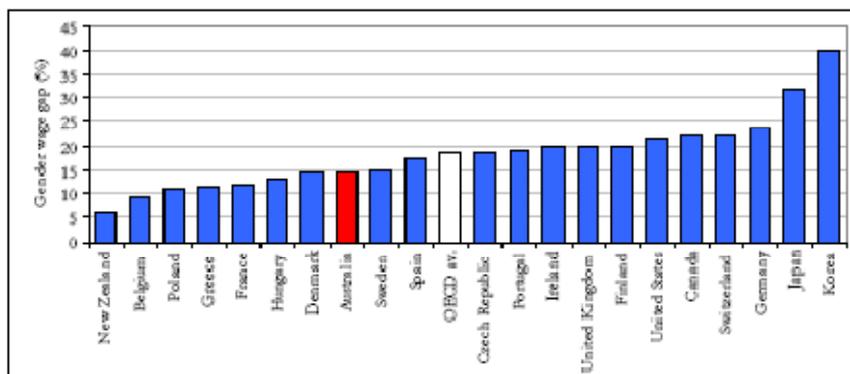
3.9 Figure 3.1 shows Australia's differences in the gender wage gap for low, medium and high income earners and the relative position compared to other OECD countries in 2003-2004.

Figure 3.1 Gender wage gap (Around 2003-04)



Source Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender Earnings differentials in Australia: A statistical overview of women's earnings, unpublished presentation, September 2008.*

Figure 3.2 International comparison of gender wage gaps¹⁴



Source Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender Earnings differentials in Australia: A statistical overview of women's earnings, unpublished presentation, September 2008.*

14 Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender Earning differentials in Australia: A statistical overview of women's earnings*, Presentation to the Australian Bureau of Statistics Pay Equity Forum, September 2008, unpublished, p. 10. Gender gap in median earnings of full time employees, 2004 or latest year available. Sources OECD Women and men in OECD countries 2007, Employment and Labour Market Statistics, Table 38181941.xls.

- 3.10 Figure 3.2 places Australia just below the OECD average in terms of the gender wage gap.¹⁵ At the time, Australia was ranked 8th in the OECD based on the gender gap in median earnings for full time employees. More recent figures released show Australia slipping from 17th to 21st on the global gender index and in 2009 was 20.¹⁶

International approaches to address pay inequity

- 3.11 Ms Meg Smith stated that:

Internationally there has not been the strong joining of equal pay applications with wage fixing processes and in many other jurisdictions ... it is founded in human rights law. Then you have the problem of claimants having to claim the right to equal pay. In those jurisdictions where they have sought to introduce provisions that might be thought of as either proactive provisions or gender pay equity audit provisions, for example, the United Kingdom is going down the path of gender pay equity audits, Canada has gone some way down that path and New Zealand has gone down that path in the public sector. There has always been a significantly high resolution of those issues in a favourable sense in the public sector rather than the private sector.¹⁷

Scotland and the United Kingdom

- 3.12 The Close the Gap project has been operating in Scotland since 2001 and the first phase of the project, which ran until December 2005, was funded under the [European EQUAL initiative](#).¹⁸ The Close the Gap initiative was established in recognition of the 'fact that the gender pay gap is an issue for women's equality ... but also for Scotland's productivity':

The work that we do very much ties in with the current Scottish government's economic strategy and the specific sectors that it has identified as being important to Scotland. Some of these are:

15 Gender gap in median earnings of fulltime employees, 2004 or latest data available. Source OECD Women and men in OECD countries 2007, Employment and Labour Market Statistics, Table 38181941.xls

16 World Economic Forum, 2009, *The Global Gender Gap Report*, p. 63; World Economic Forum, 2008, *The Global Gender Gap Report*, p. 43; World Economic Forum, 2007, *The Global Gender Gap Report*, p. 38.

17 Ms Meg Smith, *Transcript of Evidence*, 26 September 2008, p. 51.

18 Close the Gap The Project, <http://www.closesthegap.org.uk/project.asp?h=History> accessed 8 October 2009.

science and technology; energy, with a specific focus on renewables ... including the finance sector.¹⁹

- 3.13 Close the Gap builds the capacity of individual organisations and provides guidance and assistance to the sectors to meet their statutory obligations. Close the Gap is a partnership project that includes the Scottish Government, Scottish Enterprise, Scottish Trades Union Congress, Highlands and Islands Enterprise, and the Equality and Human Rights Commission.
- 3.14 The United Kingdom's approach also emphasises productivity. Figures released by the Women and Work Commission in 2005 estimated that should the causes of the pay gap be resolved, the benefits would be two per cent of GDP (£23 billion) to the United Kingdom's economy.²⁰

Pay equity in Scotland

- 3.15 Scotland's Parliament was established under the devolution process implemented by the *Scotland Act 1998*. Under this arrangement 'equality per se is reserved to the UK government'.
- 3.16 In the United Kingdom the *Equal Pay Act 1979* and the *Sex Discrimination Act 1975* underpin equal remuneration.²¹ An objective of the Equal Pay Act is to 'eliminate discrimination between men and women in the same employment in pay and other terms and conditions of employment such as piecework, bonus payment, redundancy payment and employer's superannuation contributions':

The Equal Pay Act offers avenues of recourse for claimants who believe they have been discriminated against on the basis of sex, with the burden of proof resting with the employer to prove to the employment tribunal that any differences in pay are not inequitable but are genuinely due to a factor other than the difference in sex between the employees concerned.²²

- 3.17 The Scottish Government is responsible for all issues that are not explicitly reserved to the United Kingdom Parliament. The *Scotland Act* identifies an equalities remit of the Scottish Parliament and the Equal Opportunities Committee is one of eight mandatory standing committees of the Parliament:

19 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 1.

20 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 3.

21 A further relevant law is the *Equality Act 2006*, Para. 3.23.

22 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 28.

Employment legislation is reserved to the UK Government at Westminster ... The Equal Pay Act (as amended) provides for legal remedy where men and women are doing like work, work rated as equivalent by an analytical job evaluation scheme, or work of equal value, and their difference in pay cannot be explained by reasons that are not attributable to, or tainted by, their difference in sex.²³

- 3.18 The United Kingdom's Sex Discrimination Act can influence the gender pay gap through prevention of discrimination in education, training and employment.²⁴ A voluntary Code of Practice on Equal Pay was introduced in 1997.²⁵ DEEWR stated that:

The 2006 ILO Working Paper on pay equity models was ... critical of the United Kingdom model finding that despite a genuine willingness (on the part of the Government) to promote pay equity in workplaces the model "focuses more on the establishment of non-discriminatory pay practices than on the elimination of the pay gaps themselves; more on achieving equal opportunities rather than equal results".²⁶

- 3.19 Close the Gap clarified:

The law requires individual women or men to take cases. There is no clear provision for mass litigation, although in some tribunals case management is, in practice, processing cases in bulk. There are currently approximately 50,000 outstanding equal pay cases in the Scottish tribunal system. The vast majority of these are equal value cases that have arisen from public sector pay modernisation programmes.²⁷

Gender Equality Duty

- 3.20 The *Equality Act 2006* requires public sector bodies in the UK to take steps to actively promote equality between men and women through their work and eliminate unlawful discrimination:

23 Ms Emma Ritch, *Submission No. 149*, pp. 1-2.

24 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 28.

25 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 28; Equal Opportunities Commission 2003, *Code of Practice on Equal Pay*, London.

26 Department of Education, Employment and Workplace Relations, *Submission No. 58*, pp. 28-29; Chicha, M-T 2006, *A comparative analysis of promoting pay equity: models and impacts*, International Labour Office, Geneva.

27 Ms Emma Ritch, *Submission No. 149*, p. 2.

Listed public bodies with more than 150 full time equivalent staff, in Scotland,... were ... required to publish an equal pay statement, by September 2007, which was expected to provide a detailed description of how the equal pay aspirations of the public body would be delivered. The statement was recommended to include activity to address each of the causes of the gender pay gap, including occupational segregation, inflexibility of working arrangements and discrimination within pay system.²⁸

New Zealand

3.21 Between 2004 and 2009 a five year Pay and Employment Equity Plan of Action was implemented in New Zealand. A Tripartite Pay and Employment Equity Taskforce had found that:

... the gender pay gap in the public sector arises from the way that women's jobs are valued, the jobs that women are in and the relationship between the structure of paid work and women's job choices and progression. The task force found that the gender pay gap is persistent and troubling, that it is not good for the economy and that it is not in the interests of the majority of employers or employees.²⁹

3.22 The New Zealand Government decided to lead by example and conducted pay and employment reviews across the public sector where the gender pay gap was higher than in the general workforce:

... because of the higher concentration of women in the public sector and their greater concentration in female dominated, lower paid occupations.

The evidence based and cooperative nature of the reviews produced extensive qualitative and quantitative information and analysis about gender equity and employment and developed workable solutions that were agreed by employers, unions and chief executives.³⁰

3.23 The New Zealand Pay and Employment Equity Plan of Action focused on the pay and employment reviews in 67 public sector workplaces which covered 13.5 per cent of New Zealand employees:

28 Ms Emma Ritch, *Submission No. 149*, p. 2.

29 Ms Philippa Hall, Director, Pay and Employment Equity Unit, Department of Labour, New Zealand, *Transcript of Evidence*, 13 August 2009, p. 1.

30 Ms Philippa Hall, Director, Pay and Employment Equity Unit, Department of Labour, New Zealand, *Transcript of Evidence*, 13 August 2009, p. 2.

The review process has been a significant education and awareness raising exercise for employers, unions, human resources practitioners and others, and hundreds of people have been directly involved in review committees and many thousands involved in reviews in various ways...

The mechanisms established to implement the Plan of Action were:

- a dedicated seven person Pay and Employment Equity Unit (PEEU) in the Department of Labour (the overall leader of the Plan) to develop tools and provide advice and support for the programme ;
- a one million dollar annual Contestable Fund to resource pay and employment equity projects (in the event, primarily used to resource organisations conducting pay and employment equity reviews); and
- a tripartite Steering Group comprising employers and unions for the Public Service, public health and public education, the EEO Commissioner, the Director of the PEEU and an independent Chair, to lead and monitor the programme.³¹

3.24 The New Zealand approach instigated:

... ways of making gender equity ordinary so that they are just built in to everyday practice and so that you do not have to go through that redress mechanism with all the toll that it takes, and the very contested nature of such applications and the almost inevitable compromise nature of the solutions.³²

3.25 The New Zealand Government stated:

The main information used in the reviews has been payroll and other human resources information and staff surveys and other consultations with staff.³³

3.26 The gains of the New Zealand Pay and Employment Equity Unit, included:

- promotion of greater openness and transparency of wage and promotion systems;
- greater clarity of job specifications;
- employee participation in equity issues;
- constructive interaction with unions; and

31 New Zealand Department of Labour, *Submission No. 148*, p. 1

32 Dr Anne Juror, *Transcript of Evidence*, 26 September 2008, p. 58.

33 New Zealand Department of Labour, *Submission No. 148*, p. 2.

- improved organisational communication.³⁴

3.27 The Finance Sector Union of Australia commended the New Zealand approach, particularly the gender neutral job evaluation tool.³⁵

Findings of the pay and employment equity review process

3.28 The New Zealand Government described:

The pay and employment equity review tool ... [as] structured around three indicators of gender equity in employment – equity between women and men in rewards, in participation in all areas and levels of the organisation, and in experiences of being treated with respect and fairness.³⁶

3.29 The undervaluation of women's work has been estimated as accounting for 20 per cent or 25 per cent of the gender pay gap in New Zealand³⁷ and:

All Public Service reviews except one found gender pay gaps in median equivalent full-time earnings. These varied in size from 3% to 35%. Common findings included:

- Women and men received unequal starting salaries for the same job;
- Female-dominated jobs were lower paid than male-dominated jobs;
- Gender inequalities were found in pay progression and performance pay;
- Women predominated in the lowest paid staff and were a minority of those in the best paid jobs; and
- Women had a smaller share of additional rewards, such as employer-funded superannuation, premiums and bonuses.³⁸

3.30 The review process also discovered 'significant gender differences in opportunities to participate in all roles and at all levels', including:

- women were often under-represented at senior management levels and were less likely to apply for more senior roles;

34 Australian Education Union, *Submission No. 76*, p. 18 citing Fisher G, 2007, *Pay Equity – Time to Act Report into Pay Equity and the Impact of WorkChoices*, Queensland Industrial Relations Commission, p. 91.

35 Ms Susan Kenna, National Industrial Officer, Finance Sector Union of Australia, *Transcript of Evidence*, 3 April 2009, p. 28.

36 New Zealand Department of Labour, *Submission No. 148*, p. 2.

37 Ms Philippa Hall, Director, Pay and Employment Equity Unit, Department of Labour, New Zealand, *Transcript of Evidence*, 13 August 2009, p. 3.

38 New Zealand Department of Labour, *Submission No. 148*, p. 6.

- high levels of occupational segregation by gender;
- female staff had less access to training and development opportunities;
- female-dominated roles had fewer career steps;
- women were less likely to believe that they would be supported by their manager to apply for a more senior role; and
- most part-timers were women and women were more likely to be employed on temporary contracts.³⁹

Canada

3.31 At a federal level, the Canadian legislative approach to gender pay equity has been implemented through the *Canadian Labour Code 1985* and the *Canadian Human Rights Act 1985*. In 2004, an independent Pay Equity Taskforce reported on *Pay Equity: A New Approach to a Fundamental Right* which recommended new federal stand alone pay equity legislation.⁴⁰

3.32 The *Employment Equity Act 1995* applies to federally regulated private sector employers of more than 100 employees and most public sector employers:

The Act places an obligation on employers to eliminate employment inequity by:

1. Identifying and eliminating employment barriers that result from the employer's policies and practices (where they are not authorised by law);
2. Instituting positive policies and practices to ensure that people in designated groups (Indigenous people, people with disabilities, women and people in visible minorities) are represented within each group in the employer's workforce in numbers that reflect their representation in the Canadian workforce;
3. Developing an employment equity plan including timelines for achieving the desired representation of designated groups; and
4. Filing annual public employment equity records, reporting on how they are progressing towards employment equity.

The Canadian Human Rights Commission is responsible for ensuring compliance with the Act, but the staff in the Commission

39 New Zealand Department of Labour, *Submission No. 148*, p. 6.

40 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 29.

generally see their role as assisting employers to comply with their obligations, rather than taking proceedings against them.⁴¹

3.33 These national Acts are supported by various pieces of legislation at the provincial level.⁴²

3.34 The Department of Education, Employment and Workplace Relations commented that a:

... multi-tiered arrangement sparked prolonged concern from stakeholders and members of the public, with key concerns identified as being:

(i) lack of clarity with respect to definitions of key concepts, standards and methodologies, including the meaning of 'establishment', occupational group, gender-neutral job evaluation, and wage adjustment methods;

(ii) frequent challenges to the methodologies selected for job evaluation and wage adjustment;

(iii) timeliness and effectiveness of the current system which has been characterized by protracted and costly litigation and concomitant delays in correcting wage inequities; and

(iv) inaccessibility of the system to individual and non-unionized employees.⁴³

3.35 The ACTCOSS added that:

We note that there has been considerable controversy in relation to a number of areas of the Act (particularly the term 'visible minorities') and that its application is very limited, with the 2006 review of the Act finding that only about 6% of the Canadian population come under the Act. However, it is a positive example of affirmative action in the area of workplace inequity that has operated over a long time period and can be looked to for guidance.⁴⁴

41 ACT Council of Social Services, *Submission No. 54*, p. 6.

42 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 29.

43 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 29; Department of Justice Canada 2004, *Pay Equity Review Backgrounder*, Ontario. Accessed at <http://www.justice.gc.ca/eng/payeq-eqsal/6026.html>

Quebec

- 3.36 In 1996, Quebec adopted its own proactive pay equity legislation which came into effect for employers as of November 1997. The *Quebec Pay Equity Act 1995* covers all aspects of pay equity implementation and applies to employers with 10 or more employees.⁴⁵ As stated by the Queensland Industrial Relations Commission, Quebec's Pay Equity Act is widely regarded as most the progressive approach to pay equity to date.⁴⁶
- 3.37 The statute contemplates different requirements for enterprises employing more than 100 employees, enterprises employing between 50 and 99 employees and enterprises with between 10 and 49 employees. For the purposes of the Act, 'enterprise' is defined as configuration of activities which can be described as self-contained and functional.⁴⁷
- 3.38 Pay equity legislation in Quebec requires employers to be proactive in addressing pay equity.⁴⁸
- 3.39 The Pay Equity Commission is the administrative arm of the Pay Equity Act and was established one year prior to the legislation coming into effect for employers with a view to providing information and resources to assist in giving effect to the Act. Other features of the Quebec legislation include:
- flexibility with respect to methodological criteria in order to adapt implementation to different workplaces;
 - that several employers may work together to develop aspects of their pay equity plans;
 - provision for sectoral joint committees (subject to approval by the Pay Equity Commission);
 - the important role of joint employer-employee pay equity committees in large organisations; and
 - an obligation to maintain pay equity.⁴⁹

45 Canada Pay Equity Task Force, *Exhibit No. 81*, p.70.

46 Queensland Industrial Relations Commission, *Pay Equity – A Time to Act*, 2007, Queensland, p.82. For example see Australian Education Union, *Submission No. 76*, p. 17.

47 Pay Equity Task Force, *Pay Equity: A New Approach to a Fundamental Right*, 2004, Ottawa, p.70.

48 Dr Cassandra Goldie, Director, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, p. 17.

49 Queensland Industrial Relations Commission, *Pay Equity – A Time to Act*, 2007, Queensland, p.94.

- 3.40 Evidence to the inquiry supported initiatives undertaken in Quebec in relation to appropriate reporting requirements for business:

The public information that was available showed that it [the Quebec Pay Equity Act] was delivering positive outcomes for women and it was narrowing the pay gap.⁵⁰

- 3.41 The Anti Discrimination Commission Queensland supported the Quebec Pay Equity Act because there are a number of good elements including the requirement for organisations to report on their compliance and bolstering of monetary sanctions for non-compliance. ADCQ suggested this could be an effective means of systematically advancing pay equity in Australia.⁵¹

Pay Equity Plan

- 3.42 For employers who employ 50 or more staff the Act prescribes the development of a four stage pay equity plan designed to determine the cause of gender pay discrimination. In summary, the four stages are:
- identification of predominantly male jobs and those which are predominantly performed by women;
 - development of job evaluation methodology;
 - job evaluation, calculation of pay disparities and implementation of pay adjustments; and
 - determination of the timeframe for making pay adjustments (a four year timeframe is prescribed from the development of the pay equity plan to the implementation of pay adjustments).⁵²

Pay Equity Committee

- 3.43 Employers with more than 100 employees are required to establish a pay equity committee responsible for developing stages 1 to 3 of the process. The committee must comprise at least two-thirds employee representatives, of which at least half must be women. Furthermore, employers must provide training and information to the committee representatives to allow them to carry out their responsibilities.⁵³

50 Commissioner Glenys Fisher, Queensland Industrial Relations Commission, *Transcript of Evidence*, 31 March 2009, p. 9.

51 Commissioner Susan Booth, Anti-Discrimination Commission of Queensland, *Transcript of Evidence*, 31 March 2009, p. 74.

52 Queensland Industrial Relations Commission, *Pay Equity – Time to Act*, 2007, Queensland, p. 93.

53 Queensland Industrial Relations Commission, *Pay Equity – Time to Act*, 2007, Queensland, p. 93.

Table 3.5 Provisions of the Quebec Pay Equity Act

Size of Organisation	Pay Equity Committee	Pay Equity Plan
Organisation with 100 employees or more	Mandatory	Mandatory
Organisation with 50 to 99 employees	Optional Only obligation: joint process	Mandatory
Organisations with fewer than 50 employees	Optional	Optional Only obligation: determination of salary adjustments

Source *Pay Equity Taskforce Final Report 2004, Pay Equity: A new approach to a fundamental right, Table 4.5 Organisation by size, p. 130.*

International obligations

- 3.44 As a party to a number of international treaties, Australia is required to implement and report on obligations in relation to pay equity. The global pay equity law and policy contained in labour conventions emphasises gender neutral assessment of 'work value' as the international standard but does not prescribe the method to be applied to work value assessment. This differs from the obligations established under international human rights law, which emphasise the obligation to eliminate discrimination based on gender.
- 3.45 The objects of the *Fair Work Act 2009* are set out in section 3, and require Fair Work Australia to take into account Australia's international labour obligations.⁵⁴

54 S.3(a) *Fair Work Act 2009* The Explanatory Memorandum states that these obligations, include, those under the following instruments: International Covenant on Economic, Social and Cultural Rights (16 December 1966) [1976] ATS 5; Convention on the Elimination of All Forms of Discrimination against Women (18 December 1979) [1983] ATS 9; ILO Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (29 June 1951) [1975] ATS 45; ILO Convention (No. 111) concerning Discrimination in respect of Employment and Occupation (25 June 1958) [1974] ATS 12; ILO Convention (No. 156) concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities (23 June 1981) [1991] ATS 7; ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer (22 June 1982) [1994] ATS 4; and ILO Recommendation (No. 166) concerning Termination of Employment at the Initiative of the Employer (22 June 1982).

- 3.46 The general duty to take Australia's international obligations 'into account' is a traditional administrative law approach that gives an indirect effect to international obligations in domestic law. From a modern human rights law perspective, this approach falls short of providing a guarantee that the rights recognised in international law will be implemented. In the United Kingdom and the ACT (for example) a person exercising a power or making a decision (including a court or tribunal) must do so consistently with the relevant right, so far as it is possible to do so.⁵⁵
- 3.47 In its current form, equality rights and pay equity obligations undertaken by Australia and enshrined in ILO, CEDAW and ICESCR are incorporated as relevant matters to take into account but may be discounted or given lesser weight provided Fair Work Australia has turned its mind to relevant obligation. Consequently, it is arguable that the current approach is not a sufficiently strong mechanism to guarantee the implementation of pay equity obligations in a systemic way, because pay equity has been accorded no greater status than other relevant factors. It is one factor by which the overall objectives of a balanced framework for cooperative and productive workplace relations that promote national economic prosperity and social inclusion (s. 3).
- 3.48 The equal remuneration provisions do, however, give explicit recognition in domestic law of the right to pay equity and provide a cause of action and access to an enforceable remedy. The question now is whether, in light of the developments in international pay equity law and policy, this measure is sufficient to meet the totality of Australia's obligations.

United Nations Convention for the Elimination of All Forms of Discrimination Against Women Article 11.1

- 3.49 This Convention requires Australia to 'take all appropriate measures to eliminate discrimination against women in ... employment' and to 'encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities'.
- 3.50 States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

55 For example, s.3 *Human Rights Act 1998* (UK); s.30 *Human Rights Act 2004* (ACT), which gives effect in domestic law to the European Convention on Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights respectively. Unless there is a clear intention or necessary implication that the law is to be applied notwithstanding inconsistency, then it should be interpreted and applied in a way that give effect to the right.

- The right to work as an inalienable right of all human beings;
- The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

3.51 The UN CEDAW Committee has adopted Equal Remuneration Recommendation (13), in which the UN Committee advocated that to overcome the gender- segregation in the labour market and implement pay equity obligations under CEDAW and ILO 100, States Party adopt gender neutral job evaluation systems that compare the ‘value of those jobs of a different nature, in which women presently predominate, with those jobs in which men presently predominate.’ The results should be reported to the Committee as part of the periodic country reporting process.⁵⁶

3.52 UN CEDAW Committee also recommends that implementation machinery be established to ensure pay equity principles are applied in practice, and that parties be encouraged to adopt pay equity principles as part of their collective agreements.⁵⁷

3.53 UN CEDAW: Australia expressed concern that

... there are inadequate structures and mechanisms to ensure effective coordination and consistent application of the Convention in all states and territories.⁵⁸

3.54 The UN CEDAW Committee commented that:

The Committee regrets that the report neither provides sufficient statistical data, disaggregated by sex and ethnicity on the practical realization of equality between women and men in all areas covered by the Convention nor information on the impact and

56 ILO Resolution *Concerning the Promotion of Gender Equality, Pay Equity and Maternity Protection*, para 3, (92nd Session, June 2004).

57 CEDAW, *General Recommendation No. 13* (eighth session, 1989), para 2 and 3.

58 Committee on the Elimination of Discrimination against Women, 2006, *Concluding comments of the Committee on the Elimination of Discrimination against Women*, United Nations Convention on the Elimination of All Forms of Discrimination, p. 2.

results achieved of legal and policy measures taken. It also regrets the absence of sufficient information and data on women with disabilities.⁵⁹

- 3.55 The most recent report does contain basic statistics on employment for Indigenous women, but there is limited information about women with disabilities and those of culturally and linguistically diverse backgrounds in the most recent report.⁶⁰
- 3.56 Australia's international legal obligations apply to each constituent unit of the Federation and it is the Commonwealth that has responsibility for ensuring Australia implements its international legal obligations. The Commonwealth that has the responsibility to remedy the lack of implementation on pay equity and Australia as a nation is subject to international monitoring (principle of state responsibility). States Parties also enjoy a measure of discretion as to how they achieve the implementation of internationally binding obligations, but implementation *per se* is not optional.
- 3.57 CEDAW: Australia added that 'While noting the existence of national legislation to prohibit sex discrimination at federal, state and territory levels, the committee expresses concern about the status of the Convention at these levels and the absence of an entrenched guarantee prohibiting discrimination against women and providing for the principle of equality between women and men'.⁶¹

The Committee urges the State party to ensure that all states and territories are in full compliance with the obligations under the Convention and to take steps to entrench the prohibition of discrimination against women and the principle of equality of women and men in line with Article 2, subparagraph (a), of the Convention. The Committee further recommends that the State party undertake awareness and training programmes on the

59 Committee on the Elimination of Discrimination against Women, 2006, *Concluding comments of the Committee on the Elimination of Discrimination against Women*, United Nations Convention on the Elimination of All Forms of Discrimination, p. 3; See also Federation of Ethnic Communities' Councils of Australia, *Submission No. 50*, p. 3.

60 Australia's combined sixth and seventh report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, 2003-2008, paras 9.51 - 9.59.

61 Committee on the Elimination of Discrimination against Women, 2006, *Concluding comments of the Committee on the Elimination of Discrimination against Women*, United Nations Convention on the Elimination of All Forms of Discrimination, p. 2.

Convention for the judiciary, law enforcement officials, members of the legal profession and the public.⁶²

- 3.58 FECCA referred to the UN CEDAW Committee 2006 recommendation 'that Australia take proactive measures to eliminate discrimination against refugee, migrant and minority women and girls'.⁶³

In 2006 the Committee on the Elimination of Discrimination against Women expressed concerns that immigrant, refugee and minority women and girls in Australia may be subject to multiple forms of discrimination in the areas of education, health, employment and political participation.⁶⁴

Convention on Equal Remuneration for Work of Equal Value (ILO100)

- 3.59 Convention 100 requires the application of the principle that all male and females workers receive equal remuneration for work of equal value. Australia ratified the Convention in 1974 and has incorporated equal remuneration provisions in workplace relations and discrimination legislation although the success of this approach has been questioned.⁶⁵ It is important that pay equity must be across occupations as well as within occupations and highlighted the need for cross industry comparisons.⁶⁶ Cross industry comparisons are important particularly in the context of the level of segregation in the Australian workforce.

Article 1 For the purpose of this Convention--

(a) the term *remuneration* includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;

(b) the term *equal remuneration for men and women workers for work of equal value* refers to rates of remuneration established without discrimination based on sex.

62 Committee on the Elimination of Discrimination against Women, 2006, *Concluding comments if the Committee on the Elimination of Discrimination against Women*, United Nations Convention on the Elimination of All Forms of Discrimination, pp. 2-3.

63 Federation of Ethnic Communities' Councils of Australia, *Submission No. 50*, p. 2.

64 Ms Voula Messimeri, Chair, Federation of Ethnic Communities Councils of Australia, *Transcript of Evidence*, 24 October 2008, p. 17.

65 Group Training Australia Ltd, *Submission No. 45*, p. 4.

66 Group Training Australia Ltd, *Submission No. 45*, p. 4.

Article 2

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.
2. This principle may be applied by means of
 - (a) national laws or regulations;
 - (b) legally established or recognised machinery for wage determination;
 - (c) collective agreements between employers and workers; or
 - (d) a combination of these various means.

Article 3

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.
 2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.
 3. Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.
- 3.60 In 2004, the International Labour Organisation Conference adopted a Resolution Concerning the Promotion of Gender Equality, Pay Equity and Maternity Protection. The Resolution includes a call on governments to, among other things:
- eliminate pay differences based on gender (1(a)(v));
 - ensure that gender is taken into consideration in labour market regulation and collective agreements (1(a)(ix));
 - analyse the impact of gender segregation on the labour market (1(b)).

- 3.61 The Resolution calls on employers and workers organisations to promote:
- negotiation and adoption of employment equity plans;
 - the introduction of gender neutral job evaluation schemes;
 - the evaluation of general equality policies, workplace practices and programmes in order to detect and eliminate gender discrimination, taking into account other forms of discrimination.

Convention Concerning Discrimination in respect of Employment and Occupation (ILO111)

- 3.62 Convention 111 prohibits discrimination in employment and occupation and advises that the 'principle of remuneration for work of equal value should be upheld and implemented'.⁶⁷ The convention recognises the importance of pay equity as a measure of more general equality.⁶⁸
- 3.63 The International Labour Organisation Committee of Experts responsible for the Convention Concerning Discrimination in Respect to Employment and Occupation noted that the difficulties in the application of equal pay for equal work stem from:
- insufficient data and research
 - lack of understanding of 'equal value'
 - ignorance of the job evaluation processes necessary for determining the relative value of jobs; and
 - inadequate financial resources for collection of data and instituting appropriate job evaluation schemes.⁶⁹

Covenant on Civil and Political Rights

- 3.64 Human rights treaties which also require Australia to protect and assist families.

International Declaration on the Rights of Disabled Persons 1975

- 3.65 International Declaration on the Rights of Disabled Persons 1975 affirms the rights and dignity of women with disabilities and provides a framework for legislation, policy programs and services for women with disabilities.⁷⁰

67 Group Training Australia Ltd, *Submission No. 45*, p. 4.

68 Group Training Australia Ltd, *Submission No. 45*, p. 4.

69 Group Training Australia Ltd, *Submission No. 45*, p. 5.

70 Women With Disabilities Australia, *Submission No. 44*, p. 16.

In 2004, Australia was party to the Resolution of Gender equality, Pay Equity and Maternity Protection, adopted by the 92nd Session of the International Labour Conference (ILC). That resolution seeks to strengthen ILO Equal Remuneration Convention (No 100) and calls on the social partners to carry out capacity building, training and advocacy programmes on all aspects of pay equity.⁷¹

United Nations Convention on the Rights of Persons with Disabilities 2006

- 3.66 The Convention was ratified by Australia on 18 July 2008.
- 3.67 Article 6 recognises ‘that women and girls are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms’. And that ‘States parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purposes of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out ...’⁷²
- 3.68 Article 27 requires Australia to ‘recognise the right of people with disabilities to work in freely chosen or accepted employment in a labour market and work environment that is open’, inclusive and accessible to persons with disabilities.⁷³

Convention (No 156) Concerning Equal Opportunities and Equal Treatment of Men and Women Workers: Workers with Family Responsibilities

- 3.69 Convention 156 provides protection for workers with family and carer responsibilities by requiring Australia to take account of the needs of workers with family responsibilities in terms and conditions of employment (article 4b) and ensure that workers are not terminated on the basis of their family responsibilities (Article 8).
- 3.70 Other relevant international obligations include International Covenant Economic, Social and Cultural Rights Article 6.1; Convention on the Rights of the Child; Universal Declaration on Human Rights 1948 and Standard Rules on the Equalization of Opportunities for Persons with Disabilities 1993 and the Convention 159 International Labour Organisation Standards, Vocational Rehabilitation and Employment (Disabled Persons).

71 Work and Family Policy Roundtable, *Submission No. 143*, p. 11.

72 Women With Disabilities Australia, *Submission No. 44, Appendix 1*, p. 22.

73 Women With Disabilities Australia, *Submission No. 44*, p. 10.

Reporting on international obligations

- 3.71 Australia is required to report on a number of international conventions which have been ratified. In many areas relevant to pay equity in Australia there are significant gaps in the available information. This report will address various aspects of data collection or the lack thereof in chapter 9.
- 3.72 Women With Disabilities Australia suggested that:
- Information on women with disabilities should be provided in relevant human rights treaties periodic reports and NGO shadow reports, as a matter of course. This would include information on the situation of women with disabilities (eg employment) under each right, including their current de-facto and de-jure situation, measures taken to enhance their status, progress made and difficulties and obstacles encountered.⁷⁴

Federal Pay Equity Law – International Law

Constitutional source of power

- 3.73 It is open to the Commonwealth to develop comprehensive federal pay equity law relying on Australia's internationally binding legal pay equity obligations under various ILO and UN Treaties, and provide pay equity protections for all Australian workers.
- 3.74 The regulation of industrial relations is a shared Commonwealth and State matter, with the Australian Constitution providing a relatively limited head of power for the Commonwealth to make laws for the 'conciliation and arbitration' of 'interstate disputes' over 'industrial matters' thus leaving the bulk of industrial relations within the sphere of the States (s.51 (i)). In the absence of comprehensive referral of power by the States, industrial relations law remains a complex mix of Commonwealth and State law.⁷⁵ Victoria and South Australia referred their power to regulated industrial relations, and, the Commonwealth continues to negotiate referrals although Western Australia has declined to do so. While it is appreciated that referral may not

⁷⁴ Women With Disabilities Australia, *Submission No. 44*, p. 6.

⁷⁵ Under section 51(xxxvii) of the Constitution, the Commonwealth can make laws with respect to 'matters referred to the Parliament of the Commonwealth' by any state.

incorporate some public service sectors,⁷⁶ the capacity to address the gender pay gap in the private sector will be a significant step forward.

- 3.75 Since the 1990s consecutive Labour and Liberal-National Party Coalition Governments have relied on the corporations (s.51 (xx)) and external affairs powers (s.51 (xxix)) to extend the reach of Federal industrial relations system. DEEWR explained the background to Commonwealth equal remuneration law:

Equal remuneration provisions were first introduced into the federal workplace relations legislation in 1994 giving effect to obligations under various international conventions. Prior to this, legal principles which underpinned the federal industrial tribunal's wage fixing principles were established by two important test cases, the Equal Pay for Equal Work Case of 1969⁷⁷ and the Equal Pay for Work of Equal Value Case of 1972.⁷⁸

- 3.76 The Commonwealth may rely on Australia's international legal obligations as the source of constitutional power (via the external affairs power s. 51 (xxix) for the purpose of implementing the right to pay equity. The domestic law must be *reasonably appropriate and adapted to the purpose of implementing Australia's obligation* under international law and federal provisions that go beyond this, and, which are not supported by other heads of power, are vulnerable to invalidation by the High Court in the event of a challenge.
- 3.77 In practice, however, it would be extremely complex, difficult and probably undesirable for the Federal Government to assert a comprehensive national jurisdiction for pay equity purposes, while the rest of the industrial relations system is limited to national system employees.
- 3.78 It is notable that the equal remuneration provisions of the *Workplace Relations Act 1996* (Division 3 Part 12), were expressly intended to give effect, or further effect, to 'certain anti-discrimination conventions and

76 The New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union made the point that councils are not constitutional corporations and therefore not captured by the federal industrial relations legislation in the New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union, *Submission No. 140*, p. 2. Further on 13 November 2008 the NSW Government passed the Local Government Amendment (Legal Status) Bill decorporatising NSW Councils.

77 Equal Pay Test Case 1969 (1969) 127CAR1142.

78 National Wage and Equal Pay Case 1972 147CAR172; Department of Education, Employment and Workplace Relations, *Supplementary Submission 58.3* p. 7.

ILO recommendations' (s.620).⁷⁹ In contrast, the *Fair Work Act 2009* applies expressly to 'national system employees' and derives its constitutional authority from other heads of legislative power, and are not expressed as intending to give effect to Australian international legal obligations.⁸⁰ International law, however, does provide a constitutional basis for aspects of the *Fair Work Act* (including for example, NES) and is relevant to the interpretation of provisions of the *Fair Work Act*. The current status and reliance on international labour obligations is limited and signifies a more cautious approach.

- 3.79 Nevertheless, international law and policy provides both a source of legally binding obligations and international policy consensus on what is required in order to fulfil these obligations. Comparative analysis of other developed western nations is also useful sources of experience from which best practice model can be developed.

79 *Explanatory Memorandum, Workplace Relations Amendment Act 1996 (Work Choices) Bill 2005*, p. 303, as cited ARHC *Submission 108*, p. 16; ARHC argues that the terms 'employer' and 'employee' and 'employment' were given their ordinary means because the Division has 'universal application to employees in Australia, regardless of the identity or corporate status of their employer'.

80 S. 301 *Fair Work Act 2009*.

Equality is a meaningless abstract unless it is founded on economic security and economic strength.¹

Wages setting approaches

4.1 The National Institute of Labour Studies commented that:

... since 2000 there has been a deterioration in the female to male average wage relativity, a widening of the gender pay gap both in the casual and non-casual sectors since 2000. Women are in fact losing ground to men on average in the adult non-managerial labour market.²

4.2 The Diversity Council Australia made the point that:

... all of our traditional methods of wage setting and fixing produce gender-inequitable outcomes. Awards do, collective agreements do and individual contracts, whether they are common-law contracts or some other form of individual contract, do. We set out numerous reasons for that. As we also say, it is well recorded and understood in terms of outcomes for women under our traditional Australian methods of wage setting and fixing. What is less well understood is gendered outcomes in those other forms of wage setting and fixing. As part of this process, we need to begin to talk about that, because in a large portion of the employment market people work either in occupations and industries where there are minimum-rate awards – and so the industrial instrument does not actually have a

1 Group Training Australia Ltd, *Submission No. 45*, p. 5 citing Justice Mary Gaudron.

2 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, p. 5.

large impact on wage outcomes – or, alternatively, under a form of individual contract, whether common law or otherwise.³

- 4.3 In Victoria, the Workplace Industrial Relations Survey in 2008 found that female workers were less likely to be paid the average for that occupation in the workplace for all occupational groups.⁴ Furthermore:

Workplaces with a high proportion of male workers were more likely to have a mix of pay setting arrangements. Predominantly male workplaces comprised the highest proportion of workplaces that provided over-award payments and coverage by collective agreements. In contrast, workplaces with predominately male employees were also the least likely to be covered by individual agreements and awards. It should also be noted that in this analysis, predominantly female workplaces tended to be more reliant on award minimum standards than on collective agreements.⁵

- 4.4 Gender biases in remuneration practices may result from:

- use of biased standardized job evaluation schemes which value ‘masculine’ skills over ‘feminine’ skills;
- discretionary managerial decisions about remuneration including starting salaries, pay rises and bonuses such as valuing paid skills and experience over unpaid and not understanding gender-based differences in the negotiating approaches;
- managerial judgments made about performance and the person’s value to the organisation such as valuing of seniority and length of services over abilities and contribution;
- providing career development opportunities for men and training for current jobs for women, and
- valuing and therefore remunerating more highly occupations which traditionally are men’s occupations.⁶

- 4.5 Women’s Health Victoria listed the ways in which women’s work can be undervalued as:

- the absence of appropriate classification structures;

3 Ms Nareen Young, Executive Director, Diversity Council Australia Ltd, *Transcript of Evidence*, 26 September 2008, p. 35.

4 Victorian Government, *Submission No. 136*, p. 26.

5 Victorian Government, *Submission No. 136*, p. 22.

6 Diversity Council Australia, *Submission No. 110*, p. 9.

- poor recognition of qualifications;
- the absence of previous and detailed assessments of their work;
- gendered characterisations of the work undertaken by women; and
- inadequate application of previous equal pay measures.⁷

4.6 The New South Wales Office for Women's Policy considered that it is the structural features linked to women's working patterns in the Australian labour market that disproportionately impact on women in the negotiation of wages:

... including their location in the labour market by occupation, industry and type of employment. Mechanisms to redress the gender wage gap should be capable of reducing the effects of these structural features, which include:

- the gender segregation of the labour market and the associated historic undervaluation of work carried out in some feminised industries;
- the disproportionate participation of women in part time employment;
- the concentration of women in award reliant industries such as hospitality and retail where there is little opportunity for real bargaining or access to over award payments;
- poorer wage outcomes for women in all bargaining streams and the lower rates of unionisation in feminised industries;
- the tendency for women to trade off wages and wage related benefits as a consequence of needing to find ways to balance their working lives with their caring responsibilities; and
- the historically lower priority assigned to caring responsibilities when developing bargaining agendas and associated wage claims.⁸

4.7 The Liquor, Hospitality and Miscellaneous Union, Queensland Branch, added a number of other structural arrangements to that list:

- the deregulation of the labour market and the dismantling of public labour market institutions;
- non-inclusion of pay equity in minimum rate determinations;

7 Women's Health Victoria, *Submission No. 80*, p. 2 citing Business Victoria (2006) Causes of Gender Pay Gap. Government of Victoria. Available at: http://www.business.vic.gov.au/BUSVIC/STANDARD/PC_61632.html, Accessed 4 August 2008.

8 New South Wales Office for Women's Policy, *Submission No. 153*, p. 14. See also Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 29.

- lack of legislative arrangements to facilitate transition in and out of the labour force;
 - lack of access to training and promotion; and
 - lack of adequate legislation mandating pay equity.⁹
- 4.8 One third of the gender pay gap in Western Australia was explained by different male and female characteristics including a 'more favourable industry distribution and a higher level of capital investment in males'.¹⁰
- 4.9 The Shire of York commented that:
- Workplace reform is needed on valuing the position and the person within the workplace to reduce the reliance on gender characterisation as occurs in many assessments. If the value of the position within the organisation is paramount it will be immaterial who fills it as employment conditions and opportunities would be based on worth and contribution.¹¹
- 4.10 The Western Australian Department of Consumer and Employment Protection suggested the development of a national standard on gender neutral job evaluation to provide a 'set of criteria by which public and private sector job evaluation systems can be evaluated to ensure that the classification factors used are gender neutral'.¹²

Negotiation of wages

- 4.11 The New South Wales Office for Women's Policy commented that:
- Different forms of wage setting produce different wage outcomes. Women receive lower average weekly rates of pay than men in both the registered collective and individual bargaining streams. Across Australia, award-reliant female workers earn substantially less than women covered by collective bargaining arrangements. ... the average weekly earnings of men are greater than that of female workers for all methods of pay setting.¹³

9 Liquor, Hospitality and Miscellaneous Union, Queensland Branch, *Submission No. 138*, p. 3.

10 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 31.

11 Shire of York, *Submission No.7*, p. 2.

12 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 32.

13 New South Wales Office for Women's Policy, *Submission No. 153*, p. 18.

4.12 Minter Ellison presented the following table in relation to the form of agreement for adult non-managerial employees. Women on awards on average are paid more than men on awards but less than women on other wage setting mechanisms.

Table 4.1 Form of Agreement and Average Hourly Cash Earnings (A\$)

Agreements	Male FT %	Male Total %	Female FT %	Female Total %	Hourly earnings Male A\$	Hourly earnings Female
Award only	11.3	17.1	14.3	24.8	18	18.6
Registered collective	41	38.9	45	43.5	28.7	25.7
Unregistered collective	3.7	3.5	2.9	2.8	23.6	20.7
Registered individual	4.3	4	2.9	2.5	28.1	22.8
Unregistered individual	39.7	36.6	34.9	26.4	27.2	23.1
All methods of setting pay	100	100	100	100	26.3	23.2

Source Preston A Trends in the Gender Pay Gap, 2 March 2007 sourced from ABS 6306.0 May 2006. Adult Non-managerial employees¹⁴

4.13 Women under state collective agreements earn more than women under federal agreements. The Department of Education, Employment and Workplace Relations provided the following data:

Table 4.2 Gender wage gap for non-managerial adults by method of setting pay. Hourly ordinary time rates of pay, May 2006

	Hourly ordinary time adult rate of pay		Gender wage gap (%)
	Male (\$)	Female (\$)	
<i>Federal Agreements</i>			
Collective	28.00	25.00	10.7
Individual	26.60	23.60	11.3
<i>State Agreements</i>			
Collective	29.10	28.00	3.8
Individual	55.40	24.50	55.8
<i>Unregistered Agreements</i>			
Collective	23.40	21.10	9.8
Individual	17.30	23.20	15.0
Award Only	19.00	19.40	-2.1
Total	26.50	23.70	10.06

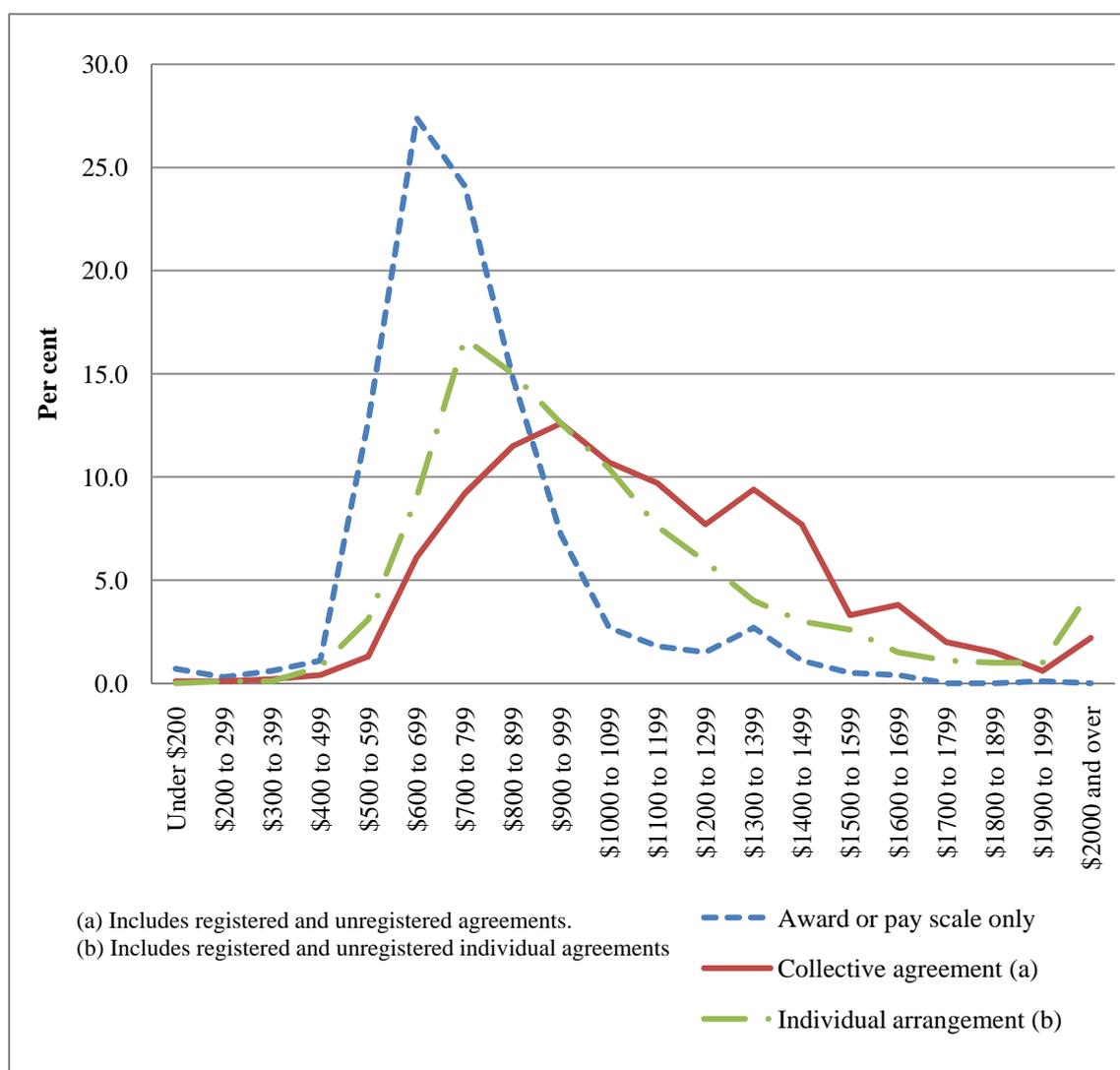
Source ABS Employee, Earnings and Hours (cat. no.6306.0), unpublished data.

14 Preston A (2007) Trends in the Gender Pay Gap, Paper presented to the Fair Pay, Equal Pay – What are the prospects for West Australian Women?, 2 March 2007, Women in Social and Economic Research, Curtin University of Technology. p. 18.

4.14 Men have been able to make greater gains under the bargaining system than women and enjoy more over-award entitlements and bonus payments, overtime and penalty rates than women.¹⁵

4.15 Figure 4.1 shows that awards are associated with lower earnings levels for women, individual agreements are in the middle of the distribution and collective agreements are at higher earnings levels.¹⁶

Figure 4.1 Method of pay setting, weekly total cash earnings – distribution of female full time non managerial adult employees August 2008



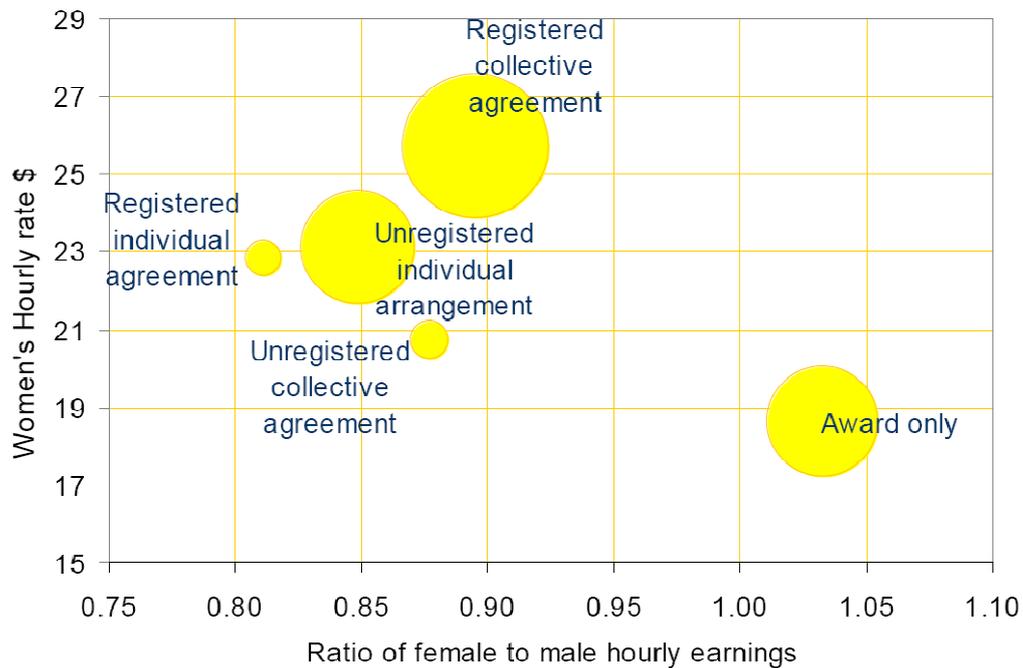
Source Australian Bureau of Statistics, unpublished data from the Survey of Employee Earnings and Hours

15 Australian Council of Trade Unions and Joint State Union Peak Councils, *Submission No. 125*, p. 6.

16 Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender Earnings differentials in Australia: A statistical overview of women's earnings*, unpublished, p. 17.

4.16 The wage setting arrangements also show a different relationship with regard to the gender wage gap. Women reliant on awards have a higher hourly earnings rate than men who depend on awards. Also individual agreements have a stronger gender wage gap but only account for a small proportion of women's pay setting arrangements.

Figure 4.2 Mean hourly earnings of female non managerial employees, gender wage gap and relative importance of different pay setting arrangements, by pay setting arrangements, May 2006 – feminisation of wage setting arrangements



Source Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender Earnings differentials in Australia: A statistical overview of women's earnings*, unpublished, September 2008.

Table 4.3 Methods of setting pay, average weekly total cash earnings, Australia, May 2006

	Average Weekly Earnings non-manual employees		Gap	Amount
	Males	Females	%	\$
Award only	\$555.30	\$448.50	18.5	\$101.80
Registered collective agreements	\$1038.00	\$729.80	32.6	\$353.20
Unregistered collective agreements	\$873.00	\$580.20	33.5	\$292.80
Registered individual agreements	\$1119.30	\$689.10	38.4	\$430.20
Unregistered individual agreements	\$1021.40	\$719.10	29.6	\$302.30
All methods of setting pay	\$946.00	\$652.00	31.1	\$294.00

Source Australian Bureau of Statistics, *Employee Earnings and Hours, Australia, May 2006 (reissue 20 April 2007)*; cat no. 6306.0 Table 20 adapted

- 4.17 Preston found that high-income women are more likely to be disadvantaged and cautioned against focusing on the mean wage because of the variation in the size of the gap across the distribution.¹⁷
- 4.18 The extent to which employers are open to negotiation is another important factor.¹⁸ In situations where full time employment is difficult to get, and some one is offered a job 'they will pretty much take it regardless of how bad the pay is, and they will hang on to it tooth and claw'.¹⁹ Working Womens' Centres stated that most low paid low status positions are offered on a take it or leave it basis:

There is little awareness by women employees, especially those in low status, low paid work about wage negotiation and few resources for them to access to assist with this. For instance if a woman was able to negotiate paid maternity leave for herself would she necessarily be aware that she should factor in superannuation and/or long service leave entitlements that would be lost if she did not bargain for them? Data released from the Workplace Authority on the impact of AWA's indicated that

17 Preston A (2007) *Trends in the Gender Pay Gap*, Paper presented to the Fair Pay, Equal Pay – What are the prospects for West Australian Women?, 2 March 2007, Women in Social and Economic Research, Curtin University of Technology, p. 23.

18 Ms Erin Wood, Director, Professional Services and National Women's Coordinator, Association of Professional Engineers, Scientists and Managers Australia, *Transcript of Evidence*, 2 April 2009, p. 53.

19 Ms Maidie Brockman, Member, Business and Professional Women Australia, *Transcript of Evidence*, 5 November 2008, p. 4.

women were disadvantaged by individual bargaining arrangements.²⁰

- 4.19 Research by the Centre for Work + Life in South Australia found that the vulnerability of the women studied:

Arose primarily from their restricted options arising from the need to juggle work and caring responsibilities; employment in small workplaces; historical reliance on award provisions and legal minimum wages and conditions; part-time, casual and contract employment; job insecurity; lack of access to information; and a lack of union access and representation. These women had little bargaining power with which to pursue workplace agreements or individual contracts that met their needs.²¹

- 4.20 During negotiations women take into account a range of options including flexibility and may trade off pay to gain these options.²² The example was given of women withdrawing from a promotional opportunity to gain flexibility.²³

- 4.21 In the negotiation of wages, women will tend to 'work around things and communicate in a circular way' while men will take a more direct approach.²⁴ Women do not tend to drive a hard bargain and may seek good outcomes for both parties.²⁵

Research has shown that the pay gap in countries with centralised pay systems is far less than in countries with deregulated and decentralised wage bargaining like the United States largely because women are likely to do worse than men if required to individually bargain with their employers.²⁶

- 4.22 The Human Resource Manager of the Epping Club commented on the difference in salary negotiations between men and women:

Men appear to believe they are entitled to their request and present a proposal supporting their request. To my

20 Working Women's Centres, *Submission No. 119*, p. 4.

21 Centre for Work + Life, *Submission No. 137*, p. 1.

22 Ms Juliet Bourke, Chair, Equal Employment Opportunity Network of Australasia, *Transcript of Evidence*, 26 September 2008, p. 86.

23 Ms Juliet Bourke, Chair, Equal Employment Opportunity Network of Australasia, *Transcript of Evidence*, 26 September 2008, p. 88.

24 Ms Samira Douglas, Chief Executive Officer, WIRE Women's Information Centre, *Transcript of Evidence*, 2 April 2009, p. 90.

25 Dr Jennifer Alexander, Chief Executive Officer, Australian Institute of Management New South Wales and Australian Capital Territory, *Transcript of Evidence*, 26 September 2008, p. 3.

26 ACT Council of Social Services, *Submission No. 54*, p. 5.

disappointment women do not demonstrate the same confidence nor do they prepare for the negotiation process. Often times expecting that their line manager or CEO will “look after them”. History also reflects that when women do not achieve the salary increase expected they have to tell their colleagues about it, causing a flow on effect from reduction in moral[e]. Men just deal with it.²⁷

4.23 The Tasmanian Chamber of Commerce and Industry found that:

- women are much less likely to pursue wage increases and prefer to be offered increases.
- they are less likely to put forward their skills and the reasons why they should get the promotion on offer.
- they are likely to be happy with what they are offered rather than pursuing an equal deal with their male colleagues.²⁸

4.24 Commissioner Broderick reported that men are more likely to ask for more money and that younger women were better at this than older women.²⁹ Women Into Politics supported the view that women employees are less forthcoming than men in seeking higher remuneration and that ‘women are generally more willing to talk to a union officer or other intermediary than to make representations to an employer on their own behalf’.³⁰

4.25 The Diversity Council added that:

This is in part a consequence of women having less negotiating capacity during collective and individual bargaining, leading to lower levels of wages and other entitlements. It is commonly noted that an important contributing factor is women’s differing negotiating styles (usually regarded as less pro-active and aggressive) to what has traditionally delivered positive remuneration and employment benefits outcomes.³¹

27 Epping Club, *Submission No. 12*, p. 1.

28 Tasmanian Chamber of Commerce and Industry, *Submission No. 87*, pp. 2-3.

29 Human Rights and Equal Opportunity Commission (2008) *Gender equality: What matters to Australian women and men, the Listening Tour Community Report*, p. 8.

30 Women Into Politics Inc, *Submission No. 49*, p. 2.

31 Diversity Council Australia, *Submission No. 110*, p. 10.

4.26 The exercise of negotiation skills can depend on the adequacy of information available and for some professions market rates are available on the web.³² Those required to negotiate wages could benefit from information on the market rates of pay for particular occupations:

In our regular consultations with female employees, we find they have really poor understanding of what the going rate is. Men tend to have better networks and they have a better understanding of what the going rate is. That is one of the reasons why they let themselves get 'dudded', because they do not have the information to make a good choice.³³

4.27 The Queensland Working Women's Service has conducted intensive workshops on negotiation skills for women and these have been very well received.³⁴

Union membership

4.28 The Department of Education, Employment and Workplace Relations reported that 21.1 per cent of full time males were union members compared to 20.2 per cent of women and 10.4 per cent of part time males compared to 17.7 per cent of part time females.³⁵

On average, the gender pay gap tends to be low for union members across state/territory, industry, occupations and employment types. ABS EEBTUM data for August 2007 show that the average weekly gender pay gap was low for union members. The gender pay gap for full-time union members stood at 12.9 per cent compared with 22.0 per cent for full-time non-union members. For part-time employees, the gender pay gap stood at 3.7 per cent for union members compared with 2.7 per cent for non-union members.³⁶

32 Ms Erin Wood, Director, professional Services and National Women's Coordinator, Association of Professional Engineers, Scientists and Managers Australia, *Transcript of Evidence*, 2 April 2009, p. 53; Ms Monika Sarder, Manager, Policy and Advocacy, Australasian Institute of Mining and Metallurgy, *Transcript of Evidence*, 2 April 2009, p. 60.

33 Ms Jenness Gardner, Manager, Pay Equity Unit, Department of Commerce, Western Australian Government, *Transcript of Evidence*, 26 February 2009, p. 13.

34 Ms Sandra Dann, Director, Working Women's Centre South Australia, *Transcript of Evidence*, 6 November 2008, p. 45.

35 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 9.

36 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 9.

4.29 The experience of Crown Melbourne Limited is that:

Male dominated unions do not pursue non-direct wage claims – such as the right to work part time or with flexible hours – but concentrate all their efforts purely on wage outcomes. They will trade off other conditions readily.³⁷

4.30 Women Into Politics also commented on the approach of trade unions to focus on increased wages in award negotiations:

Even professional unions ... for over half of the last century, accepted female members' fees while not attempting to address clear issues of equal opportunity and pay equity for women members. They never took serious industrial action to support their female members and left it to the rank and file female to agitate outside the union for equal pay and equal opportunity.³⁸

4.31 The Tasmanian Chamber of Commerce and Industry found that:

The process of union collective bargaining is often alienating to women who see it as unduly confrontational and not something with which they wish to be associated. Agreement making where employers and employees engage directly in discussions allows a negotiation that more likely to involve all, and less likely to be confrontational.³⁹

4.32 Women who are unionised may appear to be less active because they are part time or casual employees.⁴⁰ Sectors where there is less representation and therefore less bargaining power are mainly female so the 'impacts are gendered. Where employees have to negotiate their own wages and conditions, the outcomes are worse'.⁴¹ Teachers and nurses have a high level of unionisation while child care, hospitality and retail have lower levels.⁴²

4.33 The low levels of unionisation in the aged care sector. The caring nature of the work means that nurses are less likely to take industrial action. The Australian Nursing Federation considers that this has resulted in enterprise agreements that are inferior to their colleagues in other

37 Crown Melbourne Limited, *Submission No. 34*, p. 2.

38 Women Into Politics Inc, *Submission No. 49*, p. 5.

39 Tasmanian Chamber of Commerce and Industry, *Submission No. 87*, p. 3.

40 Dr Christine Short, *Transcript of Evidence*, 19 March 2009, p. 2.

41 Miss Sophie Ismail, Industrial Officer, Queensland and Northern Territory Branch, Independent Education Union of Australia, *Transcript of Evidence*, 31 March 2009, p. 31.

42 Miss Sophie Ismail, Industrial Officer, Queensland and Northern Territory Branch, Independent Education Union of Australia, *Transcript of Evidence*, 31 March 2009, p. 33.

sectors.⁴³ The aged care sector is dominated by non-nursing staff.⁴⁴ Aged Care and Community Services commented that ‘there needs to be a move towards professionalising the sector through an education and training system’.⁴⁵

4.34 Further, the Work and Family Policy Roundtable commented that the service sector which had a predominantly female workforce had ‘less to trade off in terms of inefficiencies and working time flexibility; and that there was no apparent relationship between the quantum of wage increases and working time trade offs’.⁴⁶

4.35 Many unions have a male dominated culture and may be seen as less attractive to women. The Independent Education Union of Australia believed that the need to address gender inequity in the union movement was now on the agenda:

Institutionalised gender inequality perpetuated by unions and other industrial actors has been a big problem, but the union movement is aware of that problem and is beginning to address it, but I agree that much remains to be done ... often flexible conditions of work or paid maternity leave that are traded off. Mainstreaming is going to be really important and this is why the educative and research function is important.⁴⁷

Role of awards

4.36 Dr Short commented that there are much more than 20 per cent of employees covered by awards as the Australian Bureau of Statistics record as there are slight variations in awards which are categorised as individual agreements which lessens the impact of award decisions.⁴⁸ The ACTU stated:

about 40 per cent of that workforce are currently covered by collective agreements; about another 40 per cent are covered by individual agreements of one sort or another – predominantly

43 Mr Nicolas Blake, Federal Industrial Officer, Australian Nursing Federation, *Transcript of Evidence*, 24 October 2008, p. 31.

44 Mr Darren Matthewson, Chief Executive Officer, Aged and Community Services Tasmania, *Transcript of Evidence*, 25 June 2009, p. 2.

45 Mr Darren Matthewson, Chief Executive Officer, Aged and Community Services Tasmania, *Transcript of Evidence*, 25 June 2009, p. 9.

46 Work and Family Policy Roundtable, *Submission No. 143*, p. 15.

47 Miss Ismail, Industrial Officer, Queensland and Northern Territory Branch, Independent Education Union of Australia, *Transcript of Evidence*, 31 March 2009, p. 32.

48 Dr Christine Short, *Transcript of Evidence*, 19 March 2009, p. 1.

agreements that sit on top of the award; and there are about 20 per cent in the middle that are award dependent for their wages.⁴⁹

4.37 Thus:

... we have 20 per cent award dependent and another 40 per cent for most of whom the award sets their minimum. In the collective bargaining stream, the award still has an enormous normative value. Most enterprise agreements are a tack-on to the award. The award forms the design, the architecture, of the enterprise agreement. So the award system is enormously important in setting the structure of the terms and conditions and wages that apply in our workplaces. With the award wages structure, even if you are paying in the building and mining industries three times what the minimum rate is, the classification structure and the progression criteria et cetera tend to carry over through the enterprise bargaining stream.⁵⁰

4.38 Dr Meg Smith added that:

Although minimum rates of pay capture some aspects of that, even in workplaces where there might be a formalised enterprise bargaining agreement, the award rate of pay still sits below that and informs that agreement to some significant extent. I think women's low representation in enterprise bargaining – particularly those women who are employed in either a permanent part-time or a casual capacity and in the private sector – means that those regulatory instruments by way of minimum rates awards still retain a significant importance for those women.⁵¹

4.39 Department of Education, Employment and Workplace Relations commented that:

... gender wage gaps ranged from -2.1 per cent for award-reliant employees (revealing that females on awards earn more than males on awards) to 55.8 per cent for state registered individual agreements. The higher award-reliance of females contributes to the gender pay gap. Award-reliant employees earn less than

49 Ms Catherine Bowtell, Senior Industrial Officer, Australian Council of Trade Unions, *Transcript of Evidence*, 3 April 2009, p. 1.

50 Ms Catherine Bowtell, Senior Industrial Officer, Australian Council of Trade Unions, *Transcript of Evidence*, 3 April 2009, p. 16.

51 Ms Meg Smith, *Transcript of Evidence*, 26 September 2008, p. 49.

employees on other industrial instruments and a higher proportion of females are award-reliant than males.⁵²

4.40 Diversity Council Australia stated:

The gender pay gap is also inadvertently adversely affected by the move in the past twenty years to wages and conditions of employment being determined by a combination of awards (both 'paid' and 'minimum' rates), enterprise bargaining and individual contracts, rather than centrally and by awards. While women earn less under awards, the gender pay gap is smaller compared with registered or public individual arrangements (including AWAs).⁵³

4.41 Dr Christine Short found that:

- male-dominated awards tended to have had structural efficiency or work value adjustment exercises carried out earlier;
- male-dominated awards were more likely to have benefited from advantageous minimum rate adjustment processes than female dominated awards;
- safety net adjustments were generally applied at an earlier date to male-dominated awards;
- female-dominated areas of employment were less likely to be covered by enterprise agreements and, where they did exist, were more likely to have been negotiated two to three years later;
- female-dominated agreements usually had considerably lower increases relative to the award rates of pay; and
- the application of percentage, rather than dollar, increases were widening the gap between upper and lower ends of the pay scale, with women likely to be disproportionately represented at the lower end.⁵⁴

4.42 New South Wales Office for Women's Policy commented that:

... the industries where women are significantly concentrated are also those industries that are most reliant on minimum wage

52 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 10. The very small proportion of employees on state registered agreements means that this figure may be unreliable.

53 Diversity Council Australia, *Submission No. 110*, p. 10 citing Business Victoria, 2007, *Putting pay equity into place: Understanding pay equity*. Melbourne.

54 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, pp. 29-30. Citing the research of Dr Christine Short, 2001, 2002, cited in Dr Trish Todd and Dr Joan Eveline, 2004, *Report on the review of the Gender Pay Gap in Western Australia*, p. 46.

regulation through award dependence, with little opportunity to collectively bargain for better wage outcomes ... while award reliance is unlikely to provide opportunities for workers in these areas to achieve significant improvements in wages (which are more readily available in bargaining scenarios), the award system has played an important redistributive role in ensuring that, where appropriate, improved working conditions are available by way of award variation. Test cases in the state and federal industrial tribunals have been the main mechanism for achieving these kinds of improvements ... National and state wage cases, as well as more recent mechanisms for adjusting minimum wage rates, play a part in ensuring that women in award reliant industries share in the wage improvements that are achieved through these processes.⁵⁵

Table 4.4 Award reliant industries, Australia 2006

Industry	Percentage of employees totally award reliant
Hospitality	60.1
Retail	31.3
Health and Community Services	26.6
Personal Services	23.5
Property and Business Services	19.7
All Industries	20.0

Source John Buchanan, 'Low paid employment – a brief statistical profile', Overheads prepared for press conference on LHMU – University of SA – ARC Project on low paid service sector employment, WRC, University of Sydney 2006⁵⁶

4.43 There needs to be focus on bringing awards closer to the market rate as the system is 'discriminating against women and, for that matter, people of ethnic backgrounds and people with disabilities, who rely on those awards'.⁵⁷

... wage increases for award that are more realistic – not less than inflation and leading to a situation where in my sample of wages studied in WA women achieved 50% of the wage increase than WA men did over the 13 year period studied. I believe we need a

55 New South Wales Office for Women's Policy, *Submission No. 153*, p. 16.

56 New South Wales Office for Women's Policy, *Submission No. 153*, p. 16.

57 Dr Christine Short, *Transcript of Evidence*, 19 March 2009, p. 4.

new form of adjustments to awards to bring their rates closer to the rest of the marketplace.⁵⁸

4.44 New South Wales Office for Women's Policy suggested:

Given that low paid, award-reliant industries are predominantly feminised, the introduction of the low paid bargaining stream by the *Fair Work Act 2009* may have some positive impact on low paid women's ability to engage in enterprise bargaining. However, it should be noted that when bargaining does occur, historically women are more likely than men to trade off wages, and wage related monetary entitlements, for employment conditions and flexible work arrangements which help them meet their disproportionate caring, family and household responsibilities. This effect is strongest in individual bargaining scenarios.⁵⁹

4.45 The National Institute of Labour Studies found that of the 41 per cent growth in female employment between 1994 and 2008, two thirds was concentrated in the four low paid industries listed at Table 4.5 while the increase in male employment over the same period was spread evenly across industries.⁶⁰ NILS studied the low-paid industries because of the high proportion of employees paid under the award rates:

These are retail trade; accommodation, cafes and restaurants; health and community services; and property and business services. Together, these four industries out of 17 accounted for a little bit more than two-thirds of all award dependent employees in 2006. It is not strictly speaking true that they are all low paid, but they are in large proportion affected by decisions of the Fair Pay Commission and the workers are lower paid than other workers on average.⁶¹

4.46 There was no pay gap within the award dependent sector.⁶² Businesses with fewer than 100 employees make up the majority of the workforce and

58 Dr Christine Short, *Submission No. 128*, p. 2.

59 New South Wales Office for Women's Policy, *Submission No. 153*, p. 16.

60 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, p. 3.

61 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, p. 3.

62 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, p. 4.

in many of those businesses women rely on the award as the parent agreement.⁶³

4.47 Ritchies Stores Pty Ltd support the centralised minimum wage setting system as a safety net but added that there are ‘many instances where award provisions that are intended to protect employees may in reality have had an adverse effect on employees by denying them the opportunity to negotiate individually with employers’.⁶⁴

4.48 The New South Wales Office for Women’s Policy commented that the available information:

... reinforces the conclusion that the concentration of women in industries with relatively high award coverage, and with fewer opportunities to enter into collective bargaining arrangements, inhibits the capacity of women to improve their relatively poor earnings position. It should be noted, however, that historically enterprise bargaining has not provided the same improvements in remuneration for women as for men for a variety of reasons and has not been as effective at addressing issues of concern to women workers as might have been hoped.⁶⁵

Individual agreements

4.49 The National Institute of Labour Studies found the largest gender pay gap between men and women were where pay was set by individual agreements:

... all of the deterioration that has occurred in the gap between men and women has been taking place in the individual agreement sector. If you look at the trend over time, we have seen a progressive narrowing of the gap in the award covered sector and a slower but still evident closing of the gap for workers covered by collective agreements. In contrast to this, we have seen

63 Ms Nareen Young, Executive Director, Diversity Council Australia Ltd, *Transcript of Evidence*, 26 September 2008, p. 35.

64 Ritchies Stores Pty Ltd, *Submission No. 78*, pp. 1-2.

65 New South Wales Office for Women’s Policy, *Submission No. 153*, pp. 18-19 citing Whitehouse G and Frino B, ‘Women, Wages and Industrial Agreements’, *Australian Journal of Labour Economics*, 6 (4) 2003, pp. 579-596. 63; Evesson J, Buchanan J, Bamberry L, Frino B and Oliver D, *Lowering the standards: From Awards to Work Choices in Retail and Hospitality Collective Agreements*, Prepared for the Queensland, NSW and Victorian Governments, September 2007 – less than one in six of the collective agreements studied in these industries with high female employment addressed child care and work and family balance issues p viii; NSW Pay Equity Inquiry Report op cit, Volume 1 p.154 where the contention that decentralised wages systems better redress the gender wage gap is rejected.

a widening of the gap between men and women covered by individual agreements.⁶⁶

4.50 The New South Wales Office for Women's Policy stated that:

It is also relevant to note that the largest gender earnings gap appears where registered individual agreements prevail. This essentially represents the Australian Workplace Agreements (AWAs) encouraged under Work Choices and shows the negative impact that forced individual arrangements can have on workers with little bargaining power, in this case, women in low-skill or unskilled jobs. This is particularly the case in feminised service industries, where outputs are less easily measured for the sake of trading increased productivity for increased remuneration.⁶⁷

4.51 The lack of transparency of wage negotiations in individual agreements was highlighted in a number of submissions:

The decentralisation and individualisation of bargaining also detracts from wage transparency and therefore provides an environment in which women are less likely to be aware of instances of inequitable remuneration for equal work. This issue has recently been highlighted as a cause of pay inequity in the United Kingdom. The UK Minister for Women and Equality introduced an Equality Bill to Parliament in June 2008 that will outlaw pay secrecy clauses and make it unlawful to stop employees discussing their pay. This is intended to support a range of other pay equity strategies being undertaken.⁶⁸

4.52 The Equality Legislation currently being considered by the British Parliament will make it unlawful to demand silence on pay and this transparency measure will give others access to the pay levels of peers.⁶⁹

66 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, p. 5. See also Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Submission No. 112*, p. 14.

67 New South Wales Office for Women's Policy, *Submission No. 153*, p. 19 citing Marian Baird, Rae Cooper and Damien Oliver, *Down and Out with Work Choices: The Impact of Work Choices on Women in Low Paid Employment*, Report to the NSW Office of Industrial Relations, June 2007 Whitehouse and Frino, op cit; Kristin Van Barneveld 'What's in Australian Workplace Agreements in the Hospitality Industry? A Content Analysis', *Journal of Hospitality and Tourism Management*, 13(2), August 2006, pp.199-215.

68 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 32.

69 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 12.

In addition, women are more likely to more highly value flexible working conditions and family friendly work places and will accept lower wages outcomes for these arrangements.⁷⁰

- 4.53 A 2004 survey found that Australian Workplace Agreements were more often related to extended working hours than to enhance work and family balance.⁷¹ The National Institute of Labour Studies stated that:

... it is worrying for the cause of equal pay that the trend in the individual agreement sector seems to be towards a widening of the difference between men and women. It is highly problematic, because through that period of labour market deregulation and decentralisation in how wages are set we have as a country lost the capacity, I think, to mandate through regulation that equal pay occur.⁷²

- 4.54 Research has shown that the 'prevalence of individual contracts does contribute to the widening of the gap' but in Western Australia the gender pay gap had widened massively before the introduction of individual contracts.⁷³ The ACTU added that:

Of the 40 per cent who are on individual arrangements, unless they were on an AWA, which is probably a maximum of six per cent ... but it may have got out to six per cent at its peak and it will be shrinking now – most of them are on, legally, an over-award arrangement, because the award still applies to them. Most of them are non-managerial employees. Whether that is what is being paid at the workplace is a different matter, but the award is still setting their base rate of pay and their base conditions, and they are just being paid something above that.⁷⁴

- 4.55 The National Institute of Labour Studies added that:

... it is neither in the low pay sectors affected by Fair Pay Commission decisions nor in the bargaining sectors covered by union collective agreements where the problem still lies. Actually, to the extent that women are paid less than men, it is

70 Tasmanian Chamber of Commerce and Industry, *Submission No. 87*, p. 3.

71 ACT Council of Social Services, *Submission No. 54*, p. 5 with reference to a survey conducted by the Office of Employment Advocate.

72 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, p. 20.

73 Ms Jenness Gardner, Manager, Pay Equity Unit, Department of Commerce, Western Australian Government, *Transcript of Evidence*, 26 February 2009, p. 7.

74 Ms Catherine Bowtell, Senior Industrial Officer, Australian Council of Trade Unions, *Transcript of Evidence*, 3 April 2009, p. 16.

predominantly concentrated in the sectors that are more market oriented in their pay setting and where wages are set either informally in above award agreements that are not registered or formally through instruments like Australian workplace agreements. The individual agreement sector is the sector where the main disparity in pay persists. I have said that this is a problem because obviously there is less scope for policymakers to mandate equal pay in this sector.⁷⁵

4.56 Although the gender pay gap was higher for women on individual agreements compared to men in some situations, there was evidence that this was not universal. Further, in 1993 and 1996 individual work contracts were introduced under Western Australian legislation but research did not definitively reach a position on the impact.⁷⁶ The Australian Public Service Commission found that the gap was no larger for those on AWAs than those on collective agreements.⁷⁷

4.57 In terms of absolute value, NILS found that for both men and women wages are higher under individual bargaining than under the award system.⁷⁸ The Chamber of Commerce and Industry of Western Australia stated that:

... some of the highest paid male dominated industries like mining and construction have the highest number of individual agreements and females in this industry, likely to be employed on individual agreements, are the highest paid female employees of all industries.⁷⁹

4.58 Mr Russel Bancroft from the Victorian Government cautioned that:

Quite often individual agreements, whether they be AWAs or common law contracts, may provide a higher base rate of pay, but that is in return for reductions in other benefits such as overtime payments, penalty rates or annual leave loading – benefits that are usually found under awards or collective agreements. So, quite

75 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, p. 5.

76 Ms Yvonne Henderson, Commissioner for Equal Opportunity, Western Australia, *Transcript of Evidence*, 5 November 2008, p. 80.

77 Australian Public Service Commission, *Submission No. 102*, p. 2.

78 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, p. 5.

79 Chamber of Commerce and Industry of Western Australia, *Submission No. 72*, p. 19.

often, we are not comparing like with like, and the statistics in that respect may be misleading if they are looked at just on face value.⁸⁰

4.59 UnionsWA commented on the move away from centralised wage fixing and bargaining has resulted in ‘a high degree of confusion and uncertainty’ about people’s entitlements.⁸¹ The boom conditions recently experienced in Western Australia have resulted in skills shortages and more benefits to the male dominated industries and has resulted in low unemployment being concurrent with a widening of the pay gap in that state.⁸² While there are a number of factors impacting on pay equity, UnionsWA argued that a more centralised approach would tend to compress the gap between men’s and women’s wages.⁸³ According to the CCIWA:

Nursing, for example, is one of the largest female dominated sectors and yet it is also strongly unionised and subject to collective bargaining agreements negotiated between unions and employers. It can't be said that in that industry employees have been forced into individual agreements without any bargaining power.⁸⁴

Collective bargaining

4.60 Women do not do as well as men under enterprise bargaining⁸⁵ but UnionsWA submitted that collective bargaining delivers higher wage outcomes.⁸⁶

4.61 The example was given of the Australian Public Service wages are set by collective agreements and salaries are linked to classifications which contain a number of increment points.⁸⁷ The Australian Public Service Commission (APSC) described the factors impacting on remuneration

80 Mr Russel Bancroft, Officer, Department of Innovation, Industry and Regional Development, Victoria, *Transcript of Evidence*, 2 April 2009, p. 10.

81 Ms Simone McGurk, Assistant Secretary, UnionsWA, *Transcript of Evidence*, 5 November 2008, p. 31.

82 Ms Simone McGurk, Assistant Secretary, UnionsWA, *Transcript of Evidence*, 5 November 2008, p. 31.

83 Ms Simone McGurk, Assistant Secretary, UnionsWA, *Transcript of Evidence*, 5 November 2008, p. 31.

84 Chamber of Commerce and Industry of Western Australia, *Submission No. 72*, p. 19.

85 Queensland Government, *Submission No. 135*, p. 14.

86 Ms Simone McGurk, Assistant Secretary, UnionsWA, *Transcript of Evidence*, 5 November 2008, p. 30.

87 Ms Nicole Pietrucha, Group Manager, Better Practice, Australian public Service Commission, *Transcript of Evidence*, 16 October 2008, p. 1.

levels as 'their size and nature, the labour market in which they operate and their funding arrangements of the various agencies'.⁸⁸

- 4.62 The Community and Public Sector Union (CPSU) highlighted the fact that women in the APS are employed in the lowest-paying agencies, and in the lower levels of those agencies.⁸⁹ The CPSU attributed this to the underevaluation of the work in these agencies and ongoing fiscal constraints.⁹⁰ The CPSU commented that 'it is not about productivity; it is about how government values work'.⁹¹
- 4.63 The CPSU argued that there are substantial costs involved in the development of separate agency collective agreements and the return to a single pay structure has the potential to address a number of pay equity issues within the public sector as well as potential savings.⁹² The CPSU suggest that the APS could address this through the development of a framework that promotes collective bargaining, equality, participation, flexibility and mobility'.⁹³
- 4.64 Almost 20 per cent of employed women are working in the healthcare system, with 17.2 per cent of workers in health care and social assistance on award or pay scale rates, 64.5 per cent on collective agreements and 18.2 per cent on individual arrangements. Twelve per cent work in education and training in which 81.2 per cent are on collective agreements and 10.4 per cent on individual arrangements.⁹⁴

88 Ms Nicole Pietrucha, Group Manager, Better Practice, Australian public Service Commission, *Transcript of Evidence*, 16 October 2008, p. 2.

89 Mr Stephen Jones, National Secretary, Community and Public Sector Union, *Transcript of Evidence*, 26 September 2008, p. 66.

90 Mr Stephen Jones, National Secretary, Community and Public Sector Union, *Transcript of Evidence*, 26 September 2008, p. 69.

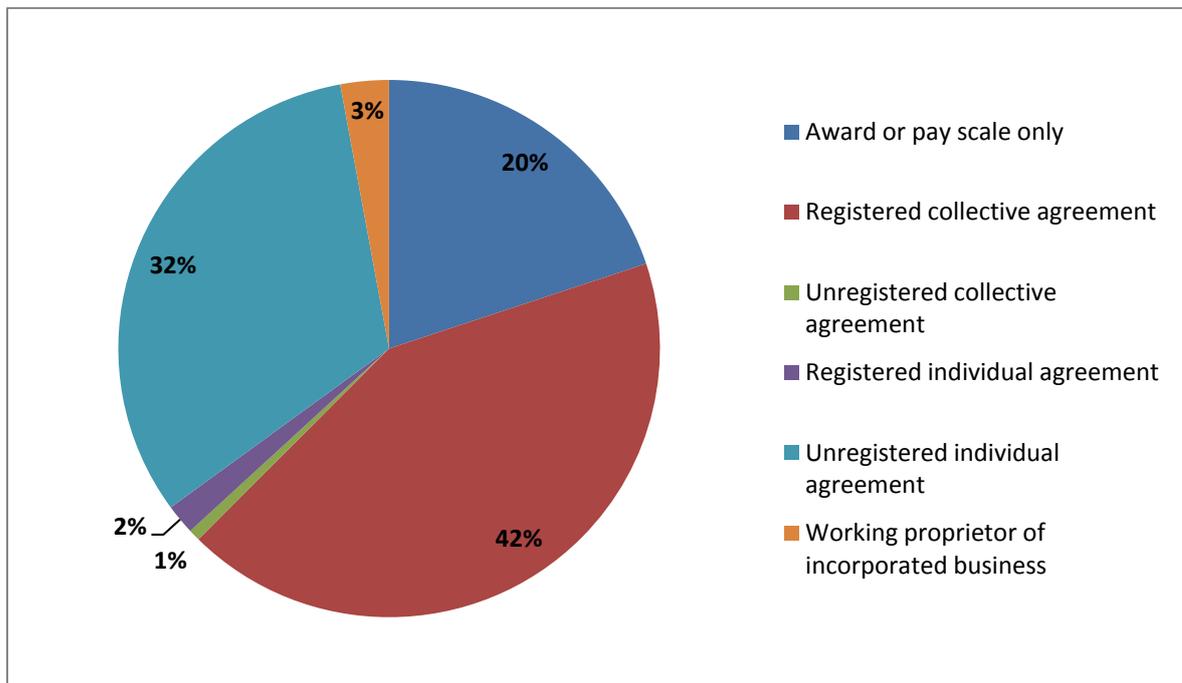
91 Mr Stephen Jones, National Secretary, Community and Public Sector Union, *Transcript of Evidence*, 26 September 2008, p. 71.

92 Mr Stephen Jones, National Secretary, Community and Public Sector Union, *Transcript of Evidence*, 26 September 2008, p. 77.

93 Community and Public Sector Union, *Submission No. 13*, p. 1.

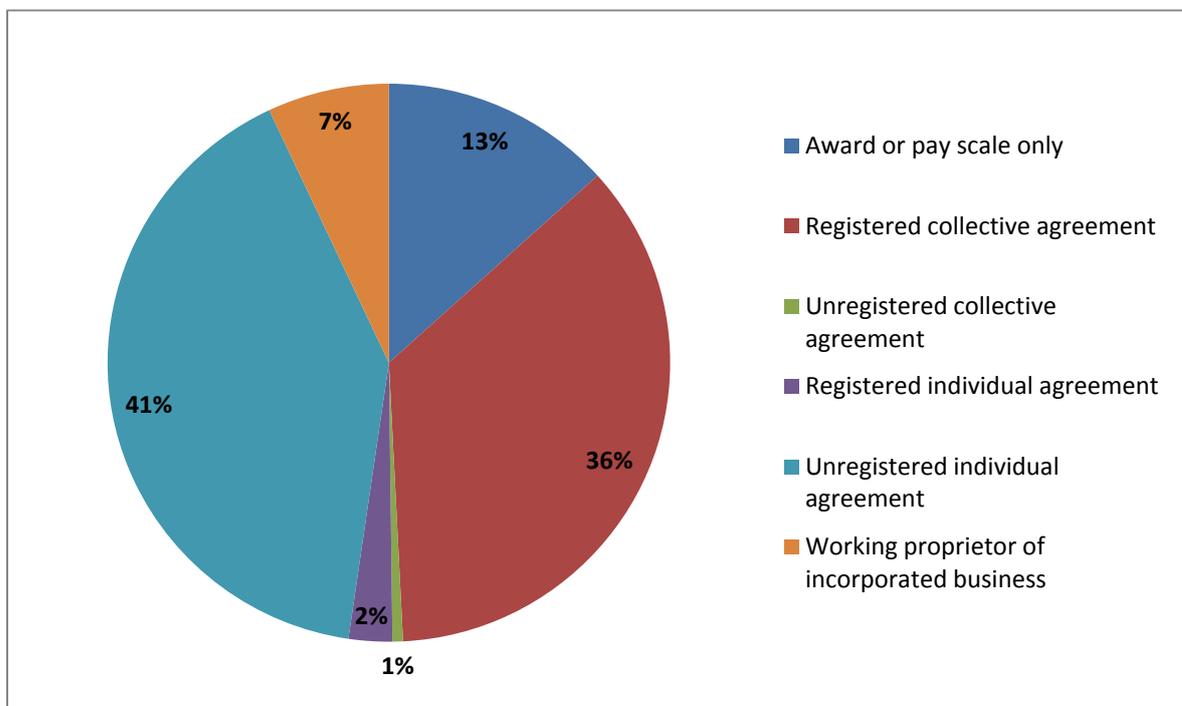
94 Mr Michael Gerrity, Assistant Director, Australian Bureau of Statistics, *Transcript of Evidence*, 13 November 2009, p. 14; Australian Bureau of Statistics, *Employee earnings and hours*, August 2008, cat no. 6306.0, p. 15.

Figure 4.3 Wage setting arrangements – female, August 2008



Source ABS Employee Earnings and Hours, August 2008, cat. No. 6306.0

Figure 4.4 Wage setting arrangements – male, August 2008



Source ABS, Employee Earnings and Hours, August 2008, (6306.0)

Table 4.5 Methods of setting pay, adult non-managerial employees, (May 2006), Community services industry⁹⁵

<i>Methods of setting pay</i>	Male		Female		Persons	
	('000)	(%)	('000)	(%)	('000)	(%)
Collective Agreement (Federally Registered)	10.1	24.8	49.4	24.9	59.5	24.9
Individual Agreement (Federally Registered)	0.4	1.1	1.6	0.8	2.1	0.9
Collective Agreement (State Registered)	7.1	17.4	21.4	10.8	28.6	11.9
Individual Agreement (State Registered)	0.0	0.0	0.0	0.0	0.0	0.0
Individual Agreement (Unregistered)	6.1	14.9	26.2	13.2	32.2	13.5
Working Proprietors	0.0	0.0	0.0	0.0	0.0	0.0
Collective Agreement (Unregistered)	n.p.	n.p.	7.7	3.9	9.0	3.8
Award Only	15.8	38.7	92.2	46.4	108.1	45.1
Total	40.9	100.0	198.6	100.0	239.4	100.0

Source Department of Education, Employment and Workplace Relations, *Supplementary Submission No. 58.3*, p. 15, *ABS Employee Earnings and Hours (cat. no. 6306.0) May 2006*, unpublished data

4.65 Dr Christine Short commented that:

It was clear that even when female dominated occupations actually achieved enterprise bargaining agreements, they did not receive as large increases as men in the 9 occupational areas studied (builders' labourer, metal tradesperson, miner/dump truck operator, truck driver, child carer, teacher, clerk, salesperson). However, only teachers and to some extent salespersons had actually achieved EBAs during the period 1990 to 2003. Women tend to work in areas where there are a large number of employers and where they are not present in a workplace in large numbers making collective bargaining agreements very difficult to achieve.⁹⁶

4.66 Dr Short found that separate agreements for clerks outside the Enterprise Bargaining Agreement was not helpful and there was an increasing tendency for EBAs not to cover everyone.⁹⁷

⁹⁵ Department of Education, Employment and Workplace Relations, *Supplementary Submission No. 58.3*, p. 15; *ABS Employee Earnings and Hours (Cat. No. 6306.0) May 2006*, unpublished data.

⁹⁶ Dr Christine Short, *Submission No. 128*, p. 2.

⁹⁷ Dr Christine Short, *Transcript of Evidence*, 19 March 2009, p. 7.

If we had stuck to an award system, we might have got somewhere close to 90 per cent – 99 or whatever – but going to an EBA system made things worse and going into individual agreements made things worse again.⁹⁸

4.67 In the community services and retailing sectors, Dr Sara Charlesworth noted that there were very few further efficiencies to be traded off in an enterprise agreement while outdoor workers could ‘give up their dead animal allowances, they could give up their dirt allowances, they could give up their wet weather allowances’⁹⁹ and their wash up time at the end of shift.

4.68 The Australian Nursing Federation referred to the ‘undervaluing of women’s work in general is a critical factor in the many battles for fair wages and conditions for nurses across the different areas of nursing employment’¹⁰⁰. Award rates have dropped in real terms over time and the Queensland Nurses Union added:

... the advent of collective bargaining, in particular, has meant that significant gaps have developed in the wages earned by nurses who have equivalent competencies, qualifications and the like. Those gaps have occurred particularly where sections of the industry are reliant on government funding, for example, and the collective bargaining system has not delivered an adequate mechanism to lift those wages up.¹⁰¹

4.69 National Pay Equity Coalition and the Women’s Electoral Lobby Australia Inc commented that:

Collective bargaining can be a pay equity strategy, especially where the bargaining is for a particular occupation (for example: nursing). It can provide an opportunity to negotiate about conducting equal remuneration reviews and implementing pay equity plans. Pay equity is generally better in more collective employment relations environments. However, where bargaining covers a range of occupations, targeting a particular group can be problematic for unions and can be seen as being at odds with a strategy to maximise collective benefits. Collective bargaining is not likely to be an effective strategy for occupations with low

98 Dr Christine Short, *Transcript of Evidence*, 19 March 2009, p. 6.

99 Dr Sara Charlesworth, Research Fellow, Centre for Applied Social Research, *Transcript of Evidence*, 2 April 2002, p. 28.

100 Australian Nursing Federation, *Submission No 97*, p. 2.

101 Mr Steven Ross, Queensland Nurses Union, *Transcript of Evidence*, 31 March 2009, p. 51.

unionisation and/or little industrial strength, and/or where unions have few women and/or are not supportive of pay equity for women. Pay equity can be weighed up and/or traded off against other benefits sought in bargaining. For collective bargaining to be successful in addressing pay equity, rules governing bargaining in the industrial system must include rights to call parties to negotiate, conciliate and, in the event of failure to agree, for Fair Work Australia to arbitrate on agreements and make awards on an occupational, industry and workplace level.¹⁰²

- 4.70 Those who have access to collective bargaining may also have access to more information about pay equity issues and the information needs to filter through to those who will be relying on improvements:

Even if changes are made and the remuneration principle is created, the majority of people who are likely to benefit from that probably will not know about it. Where the education comes from, who guides it and who supports it are very important questions as well.¹⁰³

- 4.71 National Pay Equity Coalition and the Women's Electoral Lobby Australia Inc added that requested information should be provided to industrial parties involved in collective bargaining and noted that:

While collective bargaining may not always be an effective means of progressing pay equity, it should not be permitted to be at odds with the fundamental legislated human right to equal remuneration for work of equal value without sex discrimination.¹⁰⁴

Non salary remuneration

- 4.72 Men are more likely to receive non-salary remuneration such as bonuses and allowances, longer hours, more overtime and more likely to work shifts while 'women are disproportionately employed in occupations and/or industries with low levels of bargaining power, are often more

102 The National Pay Equity Coalition and the Women's Electoral Lobby Australia Inc, *Submission No. 118*, p. 31.

103 Ms Samantha Bond, Women's Office, Victorian Trades Hall Council, *Transcript of Evidence*, 2 April 2009, p. 75.

104 The National Pay Equity Coalition and the Women's Electoral Lobby Australia Inc, *Submission No. 118*, p. 31.

reluctant to negotiate wage increases, and may experience poorer returns to negotiation'.¹⁰⁵

4.73 The point was made that:

Performance related pay confuses the waters, as it were, yet further, because it can be very difficult to get a sense of what bonuses are being offered. These sometimes outstrip even basic rates of pay and so can impact hugely on the whole pay package.¹⁰⁶

4.74 In the finance sector where there is a relatively high gender wage gap, the Finance Sector Union of Australia made the point that:

It is increasingly difficult to isolate earnings data and ensure fair comparisons in the finance sector due to the rise in performance payments/bonuses and commissions, as the industry becomes more competitive and emphasises sales of products, more than service to customers. This difficulty is compounded by the lack of objective work value criteria in the industry – the finance sector more or less bypassed the examination of skills based relativities which occurred as part of award restructuring in the late 1980s/early 1990s. It is therefore hard to objectively compare like with like jobs.¹⁰⁷

Casual work

4.75 The gender pay gap for casual workers was smaller than for non-casual.¹⁰⁸ Women without paid leave entitlements were more likely to receive a casual loading than men in this situation.¹⁰⁹ Further, 'female part time casuals earn about 10 per cent less than female part time permanents.'¹¹⁰

105 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 30 citing URCOT, 2005, *Pay Equity: How to Address the Gender Pay Gap – A Report for Industrial Relations Victoria*, p. 7; Todd & Eveline Review, 2004, p. 47; and Queensland Industrial Relations Commission, 2007, *Pay Equity: Time to Act*, p. 18 citing Crockett and Preston, 1999, report to WA Government.

106 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 13.

107 Finance Sector Union of Australia, *Submission No. 122*, p. 3.

108 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, p. 4.

109 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, p. 4.

110 Ms Jeane Wells, *Submission No. 116*, p. 3 citing Watson 2005 p. 1.

Industrial relations legislative reforms

Amendments to *Fair Work Act 2009*

- 5.1 On 20 March 2009, the Federal Parliament passed the *Fair Work Act 2009*, which commenced operation on 1 July 2009 and will become fully operational on 1 January 2010.
- 5.2 This chapter examines the adequacy of the new legislation as a means of closing the gap between male and female pay and conditions through the recognition of the right to equal remuneration for work of equal or comparable value in federal law. It argues that, to effectively institutionalise pay equity into the mainstream of the federal industrial relations system, the recognition of pay equity in the *Fair Work Act 2009* needs to be strengthened.
- 5.3 Pay equity under the *Fair Work Act 2009* can be advanced through:
- the extension of equal remuneration provisions to include work of comparable value;
 - the inclusion of equal remuneration as a guiding principle for Fair Work Australia in conducting its modern award and minimum wage fixing functions;
 - the capacity to take a work value claim to Fair Work Australia;
 - anti-discrimination protection;
 - specific benefits for the low-paid under the new multi-employer bargaining stream;
 - legislated right to require flexible working arrangements; and
 - a research function of Fair Work Australia to include three yearly research into the utilisation of the right to require flexible working arrangements, extension of an additional

12 months unpaid parental leave and individual flexibility agreements.¹

- 5.4 These features contribute to advancing pay equity, but, in its current form, the *Fair Work Act 2009* is considered by some as still falling short of effective mainstreaming of gender pay equity. Critiques of the new legislation highlight the following issues:
- pay equity is recognised only indirectly as an objective of the *Fair Work Act 2009*; and
 - pay equity as a factor to be taken into account to achieve the objective of award modernisation and in the context of minimum wage setting.
- 5.5 There is a need to institutionalise stronger commitment to pay equity into the industrial relations system by amending *Fair Work Act 2009* to include:
- elevating pay equity to a principle objective of the *Fair Work Act 2009* rather than incorporating it indirectly through ‘taking into account’ international labour rights;
 - requiring that the *Fair Work Act 2009* give effect to Australian international labour obligations, including pay equity as set out in relevant International Labour Organisation instruments; and
 - enabling the *Fair Work Act 2009* to take account of the interpretation of these international obligations by regional, national and international courts and tribunals.
- 5.6 The approach in the legislation does not give an unequivocal recognition to the right to equal remuneration or legislative direction that equal remuneration is to be achieved in award setting; enterprise agreements; and fixing minimum wages. The legislation provides that an award may be varied on ‘work value’ grounds but it is unclear whether this includes the admission of evidence of historic undervaluation of work value on the basis of gender. Further, there is no obligation on parties to bargain on pay equity in the bargaining framework and agreements may be certified that do not implement pay equity.²

1 See Department of Education, Employment and Workplace Relations, *Submission 58 and Supplementary Submission 58.4*.

2 See, for example, Luxembourg and France, where gender pay bargaining is obligatory and must be identified in the collective agreement; *Gender Mainstreaming of Employment Policies: A*

- 5.7 There is specific provision for Equal Remuneration Orders in Chapter 2 Part 2-7 of the Act allows Fair Work Australia to make equal remuneration orders to ensure equal remuneration for work of equal or comparable value. This provides Fair Work Australia with broad powers to make remedial orders where there is a successful application.
- 5.8 The Queensland Industrial Relations Commissioner commented that:
- Whilst it is clear that such an order may increase rates of remuneration, it is not clear exactly what the effect of the order will be. If the effect is to override minimum wages provided in a modern award and not adjust minimum wages per se, then there is possibly no concern. However, if the effect is to adjust minimum wages then the powers of Fair Work Australia in this respect need to be considered.³
- 5.9 If granted, remuneration orders have the effect of overriding any less beneficial term(s) of a modern award, enterprise agreement or other orders of Fair Work Australia. The new equal remuneration provisions also remove the need to prove 'discriminatory cause' required under the *Workplace Relations Act 1996* (Commonwealth). The ACTU referred to the potential in this power:
- It is not based, as the previous equal remuneration provisions were in the Workplace Relations Act, on the external affairs power. It is not based on giving effect to ILO conventions, so it is not grounded in the need to prove discrimination. It is based on the Commonwealth power to make laws in respect to corporations and so, potentially, the types of cases that could be run under that provision of the act would be broader than those we have been able to run in the past. So we think that that is an opening but, again, not a guarantee.⁴
- 5.10 Removing the need to prove discrimination has been welcomed but it remains the case that specific equal remuneration orders rely on an applicant(s) initiating proceedings and any equal remuneration order applies only to those applicants. In other words, an equal remuneration order does not amend the industrial instrument for all employees engaged under its terms.

comparative review of thirty European Countries, Director-general of Employment, Social Affairs and Equal Opportunities, European Commission 2008 pp. 50-55.

3 Commissioner Glenys Fisher, Queensland Industrial Relations Commission, *Transcript of Evidence*, 31 March 2009, p. 3.

4 Ms Catherine Bowtell, Senior Industrial Officer, Australian Council of Trade Unions, *Transcript of Evidence*, 3 April 2009, p. 2.

- 5.11 Finally, some commentators have pointed out that the legislation is unclear on how the equal remuneration will be applied in each type of employment contract: collective agreements, award and over award payments and in minimum wage fixing. For example, it remains unclear whether 'comparable worth' may still require the identification of a male comparator group to demonstrate the existence of pay inequality or whether the equal remuneration requirements will enable work valuation and take account of historical gender bias:

... the comparator method in direct discrimination works well only in discrimination cases where men and women are performing the same or similar work in the same workplace. There have been many commentaries about whether this process can work in addressing systemic discrimination, and her Honour Judge Glynn, in the New South Wales pay equity inquiry, noted, 'Anti-discrimination legislation, by and large, does not sufficiently address systemic discrimination or undervaluation deriving from the operation of a broad range of factors including occupational segregation.' It is also problematic because the act itself does have provisions for representative complaints or groups of complaints, but it is quite difficult to bring a representative complaint.⁵

- 5.12 Dr Sara Charlesworth commented in relation to the then Fair Work Bill that:

... we have got a new pay equity provision, but it is in fact quarantined from the rest of the legislation. It is stuck in a protection part of the act, along with antidiscrimination provisions. There is no sense that the way in which work is organised or structured and skills classification are also absolutely critical to pay inequity.⁶

- 5.13 Other aspects of the *Fair Work Act 2009* that may adversely and disproportionately impact on women employees have also attracted comment.

Unfair dismissal

- 5.14 Negotiations on unfair dismissal provisions during passage of the Bill resulted in the application of those provisions to employers with 15 full time equivalent employees. The concentration of women in low paid

5 Commissioner Susan Booth, Anti-Discrimination Commission Queensland, *Transcript of Evidence*, 31 March 2009, p. 73.

6 Dr Sara Charlesworth, Research Fellow, Centre for Applied Social Research, *Transcript of Evidence*, 2 April 2002, p. 24.

part time and casual employment in small business operations in, for example, the retail, catering and restaurants sectors, means a large number of women do not enjoy equal protection from unfair dismissal.

Pattern bargaining

- 5.15 The Independent Education Union of Australia raised the issue of pattern bargaining:

... one of the major issues with the new legislation will be the prohibition on what is called pattern bargaining. We believe this is going to cause problems that will flow on negatively and it is going to reduce the leverage of employees without strong bargaining power, and they are often women. That is a concern. In a general sense, the Fair Work Bill puts the emphasis onto collective bargaining. It is providing a safety net, but it is putting the emphasis onto collective bargaining. Sectors of the workforce that do not have strong bargaining power are going to suffer under this new system, and that is something that we are concerned about.⁷

- 5.16 In relation to pattern bargaining the Queensland Nurse's Union commented that:

... a number of areas where women work are reliant on a whole series of measures that are set by external players – essentially, they are funding bodies of government – in terms of not just the funds that are provided but also the outcomes they are expected to produce, how the work is done and areas such as that. In the pattern bargaining debate around the new legislation, the concept of productivity was often raised, but rarely was the idea of gender equity raised. In our submission, one of the best ways of addressing inequity for women workers, particularly for nurses, is to create mechanisms for them to be able to move and improve their wages and conditions collectively on a sector basis.⁸

- 5.17 The following sections address specific aspects of the current legislation that have been criticised for not providing adequate prominence to pay equity and suggested recommendations.

7 Miss Sophie Ismail, Industrial Officer, Queensland and Northern Territory Branch, Independent Education Union of Australia, *Transcript of Evidence*, 31 March 2009, p. 26.

8 Mr Steven Ross, Queensland Nurses Union, *Transcript of Evidence*, 31 March 2009, p. 51.

Reform to *Fair Work Act 2009*

- 5.18 Key amendments to the *Fair Work Act 2009* necessary to give explicit and effective recognition to the right to equal remuneration include:
- a) state pay equity as an explicit and key objective of the law (providing it with the same status as right to freedom of association and rule of non-discrimination)
 - b) upgrade pay equity from principle to be taken into account to explicit obligation in award making;
 - c) expand variation of awards on the ground of ‘work value’ to include historical under-valuation of work value on the basis of gender;
 - d) impose an obligation on social partners to negotiate on equal remuneration in collective bargaining (single or multi-employer agreements)
 - e) require that enterprise (single or multiple) agreements implement equal remuneration and not provide certification unless Fair Work Australia is satisfied the agreement implements pay equity;
 - f) upgrade equal remuneration from principle to be taken into account in minimum wage fixing in annual wage review and national wage orders to explicit obligation;
 - g) extend the statutory research functions of Fair Work Australia to include three yearly reviews of pay equity in relation to industry and occupation based analyses for use in Fair Work Australia proceedings;
 - h) in addition to the legislative amendments and for clarity by promulgation by President stating an equal remuneration principle and setting out how is to be applied (e.g. work evaluation, comparisons across industries including similar and dissimilar work) in all contexts – awards, enterprise agreements, minimum wage fixing.
- 5.19 The rationale behind amending the legislation in this way is that the majority of women work in low paid, part time or casual work in sectors with low levels of unionisation and are reliant on minimum wage and award safety nets. Consequently, institutionalising pay equity effectively into federal industrial instruments is essential to achieving pay equity.

Coverage limited to ‘National System Employees’

- 5.20 While the *Fair Work Act 2009* maintains the expanded federal system established by WorkChoices⁹ it is not a complete national system and

9 In the 1990s greater reliance on the corporations power extended the reach of federal industrial relations laws and in 2006 the High Court in *New South Wales v Commonwealth* (2006) 219 CLR 1 upheld the Howard Government’s *Workplace Relations Act 1996* (the Work Choices

industrial relations law remains a mix of federal and state regimes. Territories are subordinate to the Commonwealth Constitution and federal law may be applied.¹⁰ The *Fair Work Act 2009* covers 85 per cent of employees but not all.¹¹

- 5.21 Although the right to equal remuneration is enshrined in international labour and fundamental human rights treaties specific equal remuneration orders available under the *Fair Work Act 2009* are only available to ‘national system employees’. The law expressly excludes state and territory courts and tribunals with powers to make an equal remuneration order, from doing so for employees covered by the *Fair Work Act 2009* (para. 26(2) (d)).¹² The recognition and implementation of the right to equal remuneration therefore remains unequal across the country, itself raising an inequality before the law and equal protection of the law issue under Australia’s international human rights and labour law obligations.
- 5.22 Under the corporations power an ‘employer can only be covered by the federal system if it is a “constitutional corporation” i.e. a trading, financial or foreign corporation’. While ‘there can be no doubt about a proprietary limited company that trades for profit, there is considerable doubt about the status of not-for-profit incorporated organisations and of municipal, charitable and educational corporations’.¹³ This is significant from a pay equity point of view as not-for profit, municipal, charitable and education sector organisations employ large numbers of women often on low and part-time wages and for whom pay equity protection varies depending on state regime.

The position at state level?

- 5.23 At the state level pay equity principles tend to be implemented via the mainstream industrial instruments such as awards and wage fixing. Queensland is the only state with specific equal remuneration orders. However, the development of Equal Remuneration Principles (ERP),

Case). O’Neil S, Goodwin M, Neilsen, M, *Fair Work Bill 2008*, Bills Digest, 30 January 2009, No.81 (2008-2009).

10 s.122 Australian Constitution.

11 O’Neil S, Goodwin M, Neilsen, M, *Fair Work Bill 2008*, Bills Digest, 30 January 09, No.81 (2008-2009), p. 19.

12 This continues the position under *Workplaces Relations Act 1996* (s.16 (1) (c)).

13 See, e.g., Federal Court in *AWU (Qld) V Etheridge Shire Council* [2008] FCA 1268 found that a Queensland council is not and cannot be a constitutional corporation; the NSW Industrial Court in *Hardeman v Children’s Medical Research Institute* [2007] NSWIRComm 189 (24 September 2007) ruled that that a non-profit organisation, the Children’s Medical Research Institute, is not a trading or financial corporation. O’Neil S, Goodwin M, Neilsen, M, *Fair Work Bill 2008*, Bills Digest, 30 January 09, No.81, pp. 16-18.

which requires neither proof of gender discrimination nor comparisons within and between occupations and industries, is said to have enabled Industrial Relations Commissions in NSW and Queensland to assess the undervaluation of work on a gender basis and provides valuable experience for federal policy makers.¹⁴ In particular, the Queensland *Industrial Relations Act 1999* is regarded as providing a stronger integration of pay equity principles into the mainstream of industrial relations law, and, where relevant, reference to the Queensland Act is included in the following discussion.

The key elements of the Queensland principle are that the evidence test is one relating to undervaluation, with no compulsory or threshold requirement that this evidence be based on establishing discrimination or that it rely on the use of a comparator. In this way, it overcomes the problem of addressing possible cases of systemic undervaluation in a segregated labour market.¹⁵

- 5.24 The move to a more 'unified' national system is considered by some commentators to be a retrograde step because most advances in pay equity in Australia have been achieved through state tribunal based wage determinations systems. In Queensland, New South Wales and Tasmania the state tribunals have adopted equal remuneration wage fixing principles applied across industries rather than relying on the anti-discrimination jurisdiction with remedies limited to the particular applicants. The states have conducted pay equity inquiries which has resulted in more modern principles being applied in those jurisdictions.
- 5.25 As noted above, Queensland also has specific provision for Equal Remuneration Orders under the Queensland *Industrial Relations Act 1999*. Consequently, the expansion of the federal industrial system has resulted in many low paid women workers being removed from state based pay equity protections and lost some of the improvements awarded to them.¹⁶ Dental assistants and child care workers are examples where conditions were lost.
- 5.26 Further, the NSW Office for Women commented that:

14 Whitehouse G and T Rooney, 2007, 'The Queensland Dental Assistants' Equal Remuneration Case: Advancing Gender Pay Equity at State Level?', *Labour and Industry* 18 (2): 85-104.

15 Associate Professor Taksa and Dr Anne Junor, *Submission No. 109*, p. 11.

16 Commissioner Glenys Fisher, Queensland Industrial Relations Commission, *Transcript of Evidence*, 31 March 2009, p. 3.

... the gains made in the NSW system through the operation of the NSW ERP should not be lost or diminished as a consequence of the federal award modernisation process.¹⁷

- 5.27 The following paragraphs compare definitions of 'remuneration' and the development of equal remuneration principles across Australian jurisdictions.

The concept of equal remuneration

- 5.28 Under the *Fair Work Act* equal remuneration for work of equal or comparable value 'means equal remuneration for men and women workers for work of equal or comparable value'.¹⁸ The extension of the concept of equal remuneration to cover work of 'comparable value' allows both for work that is the same, and work that is dissimilar but comparable, to be evaluated for pay equity purposes.

- 5.29 The Explanatory Memoranda confirms that:

The principle of equal treatment for men and women workers for work of equal or comparable value requires there to be (at minimum) equal remuneration for men and women workers for the same work carried out in the same conditions. However, the principle is intentionally broader than this, and also requires equal remuneration for work of comparable value. This allows comparisons to be carried out between different but comparable work for the purposes of Part 2-7. Evaluating comparable worth (for instance between the work of an executive administrative assistant and a research officer) relies on job and skill evaluation techniques.¹⁹

- 5.30 Department of Education, Employment and Workplace Relations further explained the intent of expanding the concept of equal remuneration to encompass 'comparable value':

The concept of comparable value was originally developed to address equal pay concerns in occupations and industries that are dominated by one gender. The amendment will *in part* [emphasis added] address the issue of undervaluation of the work traditionally performed by women.

17 New South Wales Office for Women's Policy, *Submission No. 153*, p. 6.

18 S.12 and ss302(2) of the *Fair Work Act 2009*.

19 Explanatory Memorandum, *Fair Work Act 2009*, p. 189, paragraph 1191.

In a claim for equal remuneration, comparable worth is a method for comparing females' jobs with dissimilar (and generally male) jobs using job and skill evaluation techniques. For example, in the successful NSW Librarians case in 2000, comparable value was established by comparing the skills, educational requirements and level of responsibility in various positions in several professions including librarians and geo-scientists or geologists that demonstrated the existence of gender based valuations.²⁰

The inclusion of comparable value also supports the concept of a national system through consistency with state equal remuneration principles in legislation and state industrial tribunal wage fixing principles.²¹

- 5.31 The definition of equal remuneration in the *Fair Work Act 2009* appears to be consistent with the definition of equal remuneration in the Equal Remuneration Convention (ILO 100):²²

Remuneration means the ordinary basic or minimum wage or salary and any additional emoluments whatever payable directly or indirectly, whether in cash or kind, by the employer to the worker and arising out of the worker's employment ... the term equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex.²³

- 5.32 The use of comparator groups previously has been controversial and a question remains as to how the principle of equal remuneration will be applied in the federal jurisdiction.
- 5.33 In the New South Wales Pay Equity Inquiry there was significant debate on this point.²⁴ The key finding of the Inquiry was that the reference to comparable in the legislation did not imply a requirement for comparators. Indeed proceedings in the tribunals in New South Wales and Queensland have demonstrated that the requirement for

20 Decision [2002] NSWIR Comm 55-28 March 2002, Application under Equal Remuneration Principle.

21 Department of Education, Employment and Workplace Relations, *Supplementary Submission* 58.2, p. 13.

22 Articles 1,2, and 3 ILO 100.

23 International Labour Organisation Equal Remuneration Convention, 1951, Article 1.

24 Industrial Relations Commission of New South Wales (1998a) Pay Equity Inquiry Reference by the Minister for Industrial Relations pursuant to section 146(l)(d) of the Industrial Relations Act 1996, Report to the Minister, Volume I; Industrial Relations Commission of New South Wales (1998b) Pay Equity Inquiry Reference by the Minister for Industrial Relations pursuant to section 146(l)(d) of the *Industrial Relations Act 1996*, Report to the Minister, Volume II.

comparators can have a deleterious impact on applications. A broad range of comparators may be useful reference points for tribunals but they should not form a litmus test.

Recommendation 1

That for the removal of any doubt, the definition of equal remuneration for work of equal or comparable value in the *Fair Work Act 2009* be supplemented with a signpost note confirming that the concept of equal remuneration includes the valuation of dissimilar work of equal or comparable value.

Application of the equal remuneration principle

5.34 The wider concept of equal remuneration in the *Fair Work Act* opens the way for work valuation in the federal arena but, in its current form, the legislation is unclear on whether the historical undervaluation of work on gender grounds will be integral to the valuation process.²⁵ The legislation is silent on how the equal remuneration is to be applied in the various contexts of awards, over award payments, enterprise agreements, and minimum wage setting. The Explanatory Memorandum states that:

Clause 306 deals with the relationship between an equal remuneration order and modern awards, enterprise agreements and other orders of FWA. Under the provision, a term of one of these instruments has no effect to the extent that it is inconsistent with a term of an equal remuneration order.²⁶

5.35 The National Pay Equity Coalition advocated that new industrial relations law should provide both the concepts and the means for valuing work and that the provisions and principles established in Queensland and NSW should be used as models.²⁷

... the recent Decision of the Queensland Industrial Relations Commission relating to the Queensland Community Services and Crisis Assistance State Award finding that a range of factors

25 Note also that the Explanatory Memorandum states that this definition applies 'for the purpose Part 2-7' (ie the Equal Remuneration Orders jurisdiction) but the same phrasing is used throughout the legislation.

26 *Explanatory Memorandum, Fair Work Act 2009*, p. 190.

27 National Pay Equity Coalition, *Submission 118*, p. 4.

contributed to the undervaluation of work in the sector and a pattern emerges that gender is at the core of present work value of the community sector and the 'work has been undervalued on a gender basis'. The workers are to receive increases that range from 18% to 37%.

This Decision is a timely and contemporary example of how the formal industrial relations system can provide an immediate, expansive and progressive means of addressing problems of pay equity.²⁸

- 5.36 The value of work may be assessed by a number of methods. Historically industrial tribunals have relied on various means including but certainly not limited to job evaluation. Moreover job evaluation can imply binary forms of job comparison, a methodology that is at odds with the construct of undervaluation that should ideally inform the approach to remedying gender pay inequity. In addition research suggests that unless specific measures have been undertaken, job evaluation can obscure effective valuation of the work given that the benchmark criteria are constructed around masculinist standards.
- 5.37 The requirements of the Queensland equal remuneration principle are simply that the Commission is to assess the value of work, and is therefore 'required to examine the nature of work, skill and responsibility required and the conditions under work is performed as well as other relevant work features'. The assessment is to be 'transparent, objective, non-discriminatory and free of assumptions based on gender'.²⁹
- 5.38 The National Pay Equity Coalition and the Women's Electoral Lobby stated that the shift in these states from discrimination and 'comparable worth' to the historical under-valuation of women's work had been a major breakthrough:

The test of undervaluation did not revert to a male standard in order that applications be successfully prosecuted. Applicants could use a range of comparisons, including other areas of feminised work.³⁰

28 The National Pay Equity Coalition and the Women's Electoral Lobby Australia Inc, *Supplementary Submission No. 118.1*, p. 3.

29 *The Queensland Council of Unions and Queensland Chamber of Commerce Industry Limited, Industrial Organisation of Employers and Others* (Queensland Industrial Relations Commission, Linnane VP, Swan C, Brown C, 29 April 2002, Statement of Policy B450 of 2002) (paras 2, 3).

30 National Pay Equity Coalition, *Submission 118*, p. 13.

New South Wales ERP and Principle 14

- 5.39 Following the NSW Pay Equity Inquiry the NSW Industrial Relations Commission declared the NSW Equal Remuneration Principle (C2000-52) and its application to awards under s.23 of the *Industrial Relations Act 1996* (NSW).³¹ The NSW ERP makes it clear that claims may be made for an alteration in wage rates or other conditions of employment on the basis that the work, skill and responsibility required or the conditions under which the work is performed have been undervalued on a gender basis. The assessment of the work, skill and responsibility is to be approached on a gender neutral basis and have regard to the history of the award concerned.³²
- 5.40 A Practice Direction establishes the basic procedure to be followed by applicants.³³ NSW Office of Women's Policy stated:
- In contrast to equal remunerations provisions under previous Commonwealth legislation, the NSW Equal Remuneration Principle (NSW ERP) has been better able to address one of the key contributing factors to pay inequity – the undervaluation of work in industries and occupations stereotypically characterised as female. The NSW ERP does not rely upon a threshold sex discrimination test, a feature which has now also been removed from Commonwealth industrial relations law with the advent of the Fair Work Act.³⁴
- 5.41 Undervaluation as a construct has proven capable of addressing the consequences of sex-based stereotyping, an important capability given that stereotyping is a major reason for the undervaluation of jobs and tasks performed primarily by women or those perceived as intrinsically 'feminine' in nature. The methods adopted should not undervalue skills normally required for jobs that are in practice performed by women, such as care-giving, manual dexterity and human relations skills, and nor should they overvalue those skills typically associated with jobs traditionally performed by men, such as physical strength and use of machines, plant and equipment:

31 S.19,21,23 of the *Industrial Relations Act 1996* (NSW).

32 New South Wales Equal Remuneration Principle (C2000 -52) (a)(b)(e); Re Equal Remuneration Principle [2000] NSWIR Comm 113; National Pay Equity Coalition *Submission 118*, Appendix 1, p. 43.

33 IRC NSW Practice Direction No.6: Applications for Consent Awards having regard to s.23 of the *Industrial Relations Act 1996* (NSW).

34 New South Wales Office of Women's Policy; *Submission No. 153*, p. 5.

Further, the NSW ERP incorporates significant safeguards to protect employment. In making decisions the Industrial Relations Commission of NSW (IRC of NSW) considers changes in wage relativities both within the award and against external classifications. Any changes to awards may be phased in and absorbed against any overaward payments, and there is to be no reconsideration of work value adjustments already awarded by other wage fixing principles. The IRC of NSW must also consider the state of the NSW economy, the impact on employers and employment in the industry affected. We consider similar provisions should be contained in any Commonwealth principle.³⁵

- 5.42 The equal remuneration principle has been used to achieve 'adjustments in wage rates, conditions and classification structures for librarians and archivists, and for child care workers in NSW'.³⁶ Equal remuneration is established as a wage fixing principle by the 2008 State Wages Case.³⁷

Queensland Equal Remuneration Principle

- 5.43 In 2001, the Queensland Industrial Relations Commission (QIRC) conducted the Inquiry into Pay Equity in Queensland and recommended legislative reform and a new equal remuneration principle.³⁸ The Queensland *Industrial Relations Act 1999* was amended requiring the QIRC to ensure that all awards and agreements provide for equal remuneration.
- 5.44 In April 2002 the QIRC declared the Equal Remuneration Principle in a Statement of Policy under s.288 of the *Industrial Relations Act 1999* (Qld).³⁹ In 2007, the QIRC conducted a further review assessing the impact of WorkChoices and the effectiveness of pay equity measures

35 New South Wales Office of Women's Policy; *Submission No. 153*, p. 6 citing Industrial Relations Commission of New South Wales Re Equal Remuneration Principle15(f), (i), (j), (m) at para 158.

36 New South Wales Office of Women's Policy; *Submission No. 153*, p. 3.

37 See Principles 14 and 6, Annex A Wage Fixing Principles, *State Wage Case 2008* [2008] NSWIRComm 122 87.

38 *Worth Valuing – Report of the Pay Equity Inquiry*, Queensland Industrial Relations Commission, March 2001, < <http://www.deir.qld.gov.au/pdf/ir/worthvaluinga.pdf>>.

39 The Statement of Policy was issued under s.288 Industrial Relations Act 1999 on application during proceedings *The Queensland Council of Unions and Others and Queensland Chamber of Commerce and Industry Ltd, Industrial Organisation of Employers and Others* (No.B450 of 2002).

introduced by earlier reforms. The Inquiry found that the ERP had been particularly effective.⁴⁰

5.45 The Queensland ERP applies when the Commission:

- makes, amends or reviews awards;
- makes orders under Part 5 of the *Industrial Relations Act 1999*;
- arbitrates industrial disputes about equal remuneration; and
- values or assesses the work of employees in 'female' industries, occupations or callings.

5.46 The Equal Remuneration Principle sets out the approach to be taken by the Commission when assessing the value of work:

The second category of recommendation dealt with the formulation of a pay equity principle, the purpose of which was to guide industrial parties when presenting cases for equal remuneration in the commission. The focus of the principle is to address undervaluation of work in predominantly female occupations. It allows the work of such occupations to be unpacked, that is to allow work to be evaluated in a gender-neutral way, and for all aspects of the work performed to be examined and evaluated. It does not require male comparators or discrimination to be found in order to find undervaluation of work.⁴¹

5.47 Assessment includes a requirement to examine the nature of work, skills and responsibility required and the conditions under which work is performed. As the NSW Pay Equity Inquiry found:

... the valuation of particular work based on stereotyped notions of women's attributes, rather than the actual skills and competencies involved, is associated with the gender-based segregation of women in certain industries and occupations. This has implications for pay inequity and the historic gender-based undervaluation of work in certain female dominated areas of the labour market.⁴²

5.48 Under the principle, predominantly female occupations can be reconsidered in terms of 'work which has been previously overlooked

40 Queensland Industrial Relations Commission, September 2007, *Pay Equity Time to Act*, pp. 39-43.

41 Commissioner Glenys Fisher, Queensland Industrial Relations Commission, *Transcript of Evidence*, 31 March 2009, pp. 1-2.

42 New South Wales Office of Women's Policy; *Submission No. 153*, p. 4.

or devalued because they have been classed as inherently female aptitudes'.⁴³

The principle specifically allows the concept of what we refer to as soft skills, that is the types of skills usually exercised in predominantly female occupations, to be considered and appropriately valued. The examination of work is conducted by focusing on typically work value considerations, that is the nature of the work, skill, responsibility and the conditions under which work is performed. Importantly, it allows another element, that is other relevant work features, to be considered.⁴⁴

- 5.49 The assessment is to be transparent, objective, non-discriminatory and free of assumptions based on gender. The purpose is to ascertain the current value of work and prior work assessments or the application of wage principles cannot be assumed to be free of assumptions based on gender. Gender discrimination is not required to be shown to establish undervaluation of work. Comparisons within and between occupations and industries are not required in order to establish undervaluation of work on a gender basis but may be used for guidance to ascertain appropriate remuneration. The proper basis for comparison is not restricted to similar work.
- 5.50 In assessing the value of the work, the Commission is to have regard to the history of the award including whether any assessment and remuneration has been affected by gender of the workers. Some of the factors to be considered include:
- whether there has been some characterisation or labelling of the work as 'female';
 - whether there has been some underrating or under-valuation of the skills of female employees;
 - the degree of occupational segregation, disproportionate representation of women in part-time and casual work, low rates of unionisation, incidence of consent awards and other considerations of that type; and
 - whether sufficient and adequate weight has been placed on the typical work performance and the skills and responsibilities exercised by

43 Commissioner Glenys Fisher, Queensland Industrial Relations Commission, *Transcript of Evidence*, 31 March 2009, p. 2.

44 Commissioner Glenys Fisher, Queensland Industrial Relations Commission, *Transcript of Evidence*, 31 March 2009, p. 2.

women as well as the conditions under which the work is performed and other relevant work features.

5.51 The Commission is constrained in that it is has:

... public interest requirements of the Industrial Relations Act. These provisions require the commission to balance the interests of providing comparable pay and condition to women workers based on their skills, duties and responsibilities, with the public interest of not making their services unaffordable. The classic example, again, is child care. If wages are substantially increased then fees are correspondingly increased and working families cannot afford them. This then leads to children being taken out of care, with the result that women have to withdraw from the workforce.⁴⁵

5.52 The Commission may not achieve pay equity by reducing wages and decide to phase in the decision in light of the particular circumstances.⁴⁶

There have been to date three cases conducted under this principle. In the two that have been determined so far, the dental assistants case and the child care workers case, the additional element of other relevant work features has allowed consideration of such work features as unpaid overtime or the requirement to undertake training or to attend meetings in the employee's time at their expense to be considered as part of the overall conditions under which employees work and for the value of the work to take those matters into account.⁴⁷

Fair Work Act 2009

5.53 There are a number of questions that arise in relation to possible amendments to the *Fair Work Act*.

- How should the principle of equal remuneration be applied in the various contexts of modern awards, enterprise agreements and minimum wage fixing?
- Should the *Fair Work Act* set out in the legislation the way that the equal remuneration principle is to be applied?

45 Commissioner Glenys Fisher, Queensland Industrial Relations Commission, *Transcript of Evidence*, 31 March 2009, p. 2.

46 QIRC State of Policy under s.288 of the IR Act 1999, Equal Remuneration Principle, 29 April 2002.

47 Commissioner Glenys Fisher, Queensland Industrial Relations Commission, *Transcript of Evidence*, 31 March 2009, p. 2.

- Alternatively, should the *Fair Work Act* require that the President issue a direction on how the equal remuneration principle is to be applied within a set time from commencement of the legislation?

The meaning of 'Remuneration'

Article 1 ILO 100

5.54 Article 1 of ILO 100 Equal Remuneration Convention provides that:

(a) The term 'remuneration' includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment.⁴⁸

5.55 The ordinary meaning of emolument is a 'profit arising from office or employment; compensation for services; salary or fees'.⁴⁹

Article 11 CEDAW

5.56 Article 11.1 of CEDAW states that:

States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work. The *Equality at Work: Tackling the Challenges* report notes that:

... 'equal pay for work of equal value is one of the least understood concepts in the field of action against discrimination. It is often given narrow interpretation in laws and regulations'. If this concept is one of the least understood, then at the very minimum, legislation must be in place to underpin the empowerment of agencies to deliver.⁵⁰

48 ILO Convention 100 Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value [1975] ATS 45.

49 Macquarie Dictionary Online Word Genius.

50 Ms Jo Justo, National Industrial Officer, Australian Services Union, *Transcript of Evidence*, 31 March 2009, p. 65.

Fair Work Act 2009

- 5.57 The meaning of remuneration under the *Fair Work Act* is limited to monetary entitlements. The Explanatory Memoranda states that:

The term remuneration encompasses entitlements in addition to wages (ie, it encompasses wages and other monetary entitlements).⁵¹

- 5.58 Ms Richards, Queensland Council of Unions, stated that expressing the pay equity principle as 'equal remuneration for work of equal or comparable value', rather than 'pay' was important:

As was noted in the 2001 Queensland pay equity inquiry, this definition is important because the inclusion of remuneration, rather than pay, clearly demonstrates that the law is not solely concerned with the wage or salary, but other payments made under contract of employment. ... This means the inclusion of wage or salary payable to an employee and any amount payable or benefit made available to an employee under a contract of service.⁵²

- 5.59 National Pay Equity Coalition (NPEC) recommended that remuneration should be defined to include all elements of work related rewards including allowances, superannuation, work-related benefits and bonuses, and performance payments.⁵³ NPEC argued that:

Case law on equal remuneration demonstrates strongly that the greater the clarity about the meaning of relevant terms, the more effective the legislation.⁵⁴

- 5.60 The definition of 'remuneration' under the *Fair Work Act* covers monetary entitlements and may not be sufficiently broad to encompass the intended scope of ILO 100 Article 1 and Article 11.1(d) of the CEDAW. Accordingly the Committee recommends:

51 Explanatory Memoranda, *Fair Work Bill*, House of Representatives, p. 189.

52 Ms Amanda Richards, Assistant General Secretary, Queensland Council of Unions, *Transcript of Evidence*, 31 March 2009, p. 13.

53 National Pay Equity Coalition, *Submission 118*, p. 5.

54 National Pay Equity Coalition, *Submission 118*, p. 29.

Recommendation 2

That the *Fair Work Act 2009* be amended to broaden the definition of remuneration to include direct or indirect payments, whether in cash or in kind.

Pay equity and the objects of the *Fair Work Act*

- 5.61 Section 3 sets out the broad policy objectives of the *Fair Work Act 2009*, which is to provide a fair and cooperative system of workplace relations based on ‘good faith’ collective bargaining (enterprise level) and underpinned by a safety net of National Employment Standards, modern awards and national minimum wage orders. The legislation recognises the right to representation and free association and to be free from discrimination in the workplace.
- 5.62 Pre-ambular paragraphs and sections set out legislative objectives as they act as a guide to the interpretation of the substantive provisions of the law. They promote a ‘purposive’ methodology, explaining Parliament’s intention and help to guard against strict legalism, which may introduce unintended interpretations that undermine the laws ability to achieve the intended policy outcome.
- 5.63 The elements of the s. 3 objects that pertain particularly to pay equity include:
- the promotion of social inclusion;
 - a requirement to take into account Australia’s international obligations;
 - a requirement that employees be assisted in achieving balance between their work and family responsibilities by providing for flexible working arrangements; and
 - protection against discrimination.
- 5.64 The principle of pay equity is recognised indirectly as an objective of the Act through the expressed intention to take international labour obligations into account in order to achieve the overall goals of the Act. The individual and collective right to equal remuneration for work of equal or comparable value and the positive obligation to eliminate systemic inequality in the workplace are enshrined in various ILO and UN treaties to which Australia is a party.
- 5.65 The right to be free from discrimination also encompasses the right to be free from direct or indirect discrimination on the grounds of certain attributes (including sex/gender). However, based on past experience,

as a rule, non-discrimination has not been effective in eliminating systemic gender bias within the industrial relations system.

- 5.66 An omission in the current legislation is the need for more specific guidance as to the types of assessments available to Fair Work Australia, and the intersection of contemporary assessments with past assessments of work value. In the state industrial jurisdictions this guidance is articulated by way of equal remuneration principles founded on the construct of undervaluation.
- 5.67 Fair Work Australia could develop its own principle with possible reference to the terms of the principles in New South Wales and Queensland which have enabled consideration of a wide range of evidence concerning the valuation of feminised work. The understandings concerning gender pay equity developed in state jurisdictions, and articulated by way of equal remuneration wage-fixation principles founded on the construct of undervaluation, have proven capable of addressing gender pay equity in a diversity of cases. The recent decision by the Queensland Industrial Relations Commission in the community services sector noted the heterogeneity of the equal remuneration applications made to the QIRC including the different parts of the equal remuneration principle that they invoked.⁵⁵

Objectives of Queensland Industrial Relations Act

- 5.68 In contrast to the *Fair Work Act*, pay equity is given explicit recognition as a principal object of the Queensland *Industrial Relations Act 1999*, which provides in s.3 (d) that:

The principal object of this Act is to provide a framework for industrial relations that supports economic prosperity and social justice by:

- (c) preventing and eliminating discrimination in employment; and
- (d) **ensuring equal remuneration for men and women employees for work of equal or comparable value;** and
- (e) helping balance work and family life ...

- 5.69 The Queensland legislation signals that social justice and economic prosperity are mutually reinforcing rather than in inherent conflict and achieving pay equity is given explicit recognition as an integral element

55 Re Queensland Community Services and Crisis Assistance Award (Queensland Industrial Relations Commission, Commissioner Glenys Fisher C 6 May 2009).

of that overall goal. The object gives unequivocal legislative direction that the industrial relations system is intended to guarantee pay equity.

- 5.70 The application of an ERP is most useful in dealing with discreet occupational groups 'where award histories can be readily analysed for gender bias and where common duties, skills, responsibilities and other relevant work features can be readily identified and assessed in a gender neutral manner'.⁵⁶
- 5.71 The Queensland Government stated that the application and effectiveness of the Queensland ERP provisions is limited by their partial coverage of an occupation group:

Clearly the State law survives in its entirety for employees remaining in the Queensland jurisdiction. The difficulty, however, is that any union which seeks to pursue an equal remuneration case under the IRA and ERP for a particular occupational group is likely to find that the industrial regulation for that group is either spread across both the federal and state systems or wholly in the federal jurisdiction. The impact of having the occupational group spread across jurisdictions raises questions about the efficacy of the pursuit of such cases in the future and the effectiveness of any outcomes. It is also possible that an employer faced with an equal remuneration case may seek to incorporate their business in order to avoid the case and/or its outcomes.⁵⁷

- 5.72 Compatibility between the federal and state jurisdictions will assist in overcoming this concern and facilitate the effective and efficient consideration of future equal remuneration cases.

Recommendation 3

That the section 3 of the *Fair Work Act 2009* be amended to state that equal remuneration for men and women employees for work of equal or comparable value is an explicit object of the Act.

- 5.73 Notwithstanding the legislative amendments will achieve the necessary goal of an equal remuneration principle, for clarity, there should be by promulgation by the President of an equal remuneration principle and

56 Queensland Government, *Submission No. 135*, p. 17.

57 Queensland Government, *Submission No. 135*, p. 16.

setting out how is to be applied (e.g. work evaluation, comparisons across industries including similar and dissimilar work) in all contexts – awards, enterprise agreements, minimum wage fixing. (This could be based on the Queensland Equal Remuneration Principle model.) Clarification of this matter will be of assistance to employers and employees who are aware of the New South Wales and Queensland Equal Remuneration Principle and are seeking the comparable information in the federal jurisdiction.

Recommendation 4

That the President of Fair Work Australia, by promulgation, enunciate an equal remuneration principle and set out how this principle is to be applied (e.g. work evaluation, comparisons across industries including similar and dissimilar work) in all contexts.

Equal remuneration provisions

- 5.74 Specific provision for Equal Remuneration Orders was first introduced into the *Industrial Relations Act 1988* (Commonwealth), substantially reproduced in the *Workplace Relations Act 1996* (Commonwealth) and subsequently amended by the *Work Choices Act 2005*. Several witnesses argued that key aspects of the *Workplace Relations Act 1996* reduced the capacity of the federal industrial relations system deliver pay equity. Some of the key concerns with the previous legislation were:
- the removal of minimum wages from awards and move away from collective bargaining toward workplace and individual agreements;
 - the requirement of applicants to meet the threshold test of demonstrating that disparities in earnings had a discriminatory cause; and
 - the requirement to identify a ‘comparator group’.⁵⁸
- 5.75 The requirement that the applicant demonstrate a ‘discriminatory cause’ was said to overlook the fact that pay inequality often results from historic biases and the undervaluation of female dominated work rather than sex based discrimination.⁵⁹ The requirement to identify a ‘comparator group’ also suggested that gender pay inequity can only be proved by comparing a female dominated job with a male dominated

58 *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v HPM Industries* (1998) 94 IR 129.

59 Australian Human Rights Commission, *Submission 108*, pp. 18-19.

job – an approach that fails to appreciate the historic undervaluation of work performed in female dominated occupations and industries.⁶⁰

These features were criticised as being out of step with the evolution in thinking about equal remuneration principles based on construction of undervaluation rather than direct sex discrimination.⁶¹

5.76 DEEWR stated that:

... there have been no applications for equal remuneration orders considered by the commission since the introduction of the Work Choices Act, and only 16 previously. There were no orders made but two significant cases were widely reported. They are the *Age* case and the HPM case....⁶²

5.77 The Australian Human Rights Commission reiterated that the AIRC has not issued a single equal remuneration order and only one claim has proceeded (unsuccessfully) to arbitration.⁶³ The Sex Discrimination Commissioner intervened in the HPM Case but has never made an application under the *Workplace Relations Act* (or the previous *Industrial Relations Act 1988*).⁶⁴

5.78 The provision for Equal Remuneration Orders has been retained in the *Fair Work Act* with some notable changes. DEEWR summarised the federal reforms:

- powers for Fair Work Australia to make equal remuneration orders;
- broadening of the equal remuneration concept to include work of equal or comparable value;
- removal of current obstacles and restrictions relating to equal remuneration applications;
- limit on application of equal remuneration orders to national system employees;
- simpler and more effective compliance measures; and
- inclusion of equal remuneration as a guiding principle for Fair Work Australia in conducting its modern award and minimum wage fixing functions.⁶⁵

60 Australian Human Rights Commission, *Submission 108*, p. 19.

61 Australian Human Rights Commission, *Submission 108*, p. 19.

62 Ms Sandra parker, Group Manager, Workplace Relations Policy Group, Department of Education, Employment and Workplace Relations, *Transcript of Evidence*, 18 September 2008, p. 2.

63 *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v HPM Industries* (1998) 94 IR 129

64 Australian Human Rights Commission, *Submission 108*, p. 19.

65 Department of Education, Employment and Workplace Relations, *Supplementary Submission 58.2*, pp. 11-12.

- 5.79 In addition to extending the concept of equal remuneration the *Fair Work Act 2009* also removes the requirement to prove a 'discriminatory cause'. The Explanatory Memorandum (EM) states that '...an applicant must only demonstrate that there is not equal remuneration for work of equal or comparable value'.⁶⁶ The EM indicates that the extension of the concept of equal remuneration is intended to ensure that job and skill evaluation techniques are applied, rather than the more limited approach of sex discrimination, opening the federal jurisdiction to gender neutral job evaluation principles. The changes are intended to make Equal Remuneration Orders more accessible and effective.
- 5.80 Part 2-7 applies to 'national system employees' and relies on the corporations power,⁶⁷ it does not purport to give effect to Australia's international pay equity obligations under ILO or other UN treaties. However, these international labour obligations must be taken into account when Fair Work Australia performs a function or exercises its powers under the *Fair Work Act*.
- 5.81 Fair Work Australia is established as an independent statutory agency. Accordingly, the President is not subject to direction by or on behalf of the Commonwealth.⁶⁸ Under s. 582(1) the President may issue a written direction as to the manner in which Fair Work Australia performs its functions. This could provide a mechanism to provide additional direction on these matters.

66 Explanatory Memoranda, *Fair Work Bill*, House of Representatives, p. 189.

67 The definitions of national system employee and national system employer in these clauses operate together to provide the constitutional support for most parts of the Bill. These parts rely on the Parliament's power to legislate with respect to foreign corporations and trading or financial corporations (paragraph 51(xx) of the Constitution), the territories (section 122 of the Constitution), interstate and overseas trade and commerce (paragraph 51(i) of the Constitution) and the Commonwealth's power to regulate its own employment relationships (incidentally to other legislative powers). The links to these heads of power are established by defining national system employer as the following, in their capacities as employers of individuals: a constitutional corporation; the Commonwealth or a Commonwealth authority; a person who employs a flight crew officer, maritime employee or waterside worker in connection with constitutional trade or commerce; a body corporate incorporated in a Territory; or a person who carries on an activity in a Territory and employs a person in connection with the activity. The definition of national system employer includes a constitutional corporation that usually employs an individual and national system employee includes an individual usually employed by a national system employer.

68 S. 583 of the *Fair Work Act 2009*.

Interaction of Fair Work Equal Remuneration Jurisdiction & State and Commonwealth Anti-Discrimination Law

- 5.82 The Fair Work Authority has no jurisdiction to deal with an application for an Equal Remuneration Order under s.302, where an alternative adequate remedy is available to the employee that would ensure equal remuneration for work of equal or comparable value (s. 721). The meaning of 'adequate remedy' is open to interpretation. However, the Act and the Explanatory Memorandum clarify that (at minimum) the existence under anti-discrimination law of a remedy that consists solely of compensation for past actions is not an adequate remedy for this purpose (ss 721(2)). Section 721 works in conjunction with s 27, which preserves the operation of State and Territory anti-discrimination laws, potentially giving priority to anti discrimination jurisdictions to deal with equal remuneration cases (provided comparable remedy is available).
- 5.83 Similarly, Commonwealth anti-discrimination law potentially has priority, provided it is capable to providing an adequate remedy to the employees. An applicant will have to consider the scope of available remedies under anti-discrimination law (or other laws promoting equal opportunity) before making an application for a Commonwealth Equal Remuneration Order.⁶⁹ If alternative Commonwealth, State or Territory law provides for wider remedies the Fair Work Authority will have to assess as an *a priori* jurisdictional question whether the available alternative remedies are adequate within the meaning of the *Fair Work Act 2009*.

Application for remuneration orders

- 5.84 Resourcing to pursue remuneration orders may be substantial. Historically, the case has been that a lack of resource has significantly impeded the progress. Accordingly, a fund should be set aside under the jurisdiction of the Attorney General and bodies such as the Australian Human Rights Commission could make application for funding to enable the pursuit of cases in relation to remuneration orders. This would not be a form of recurrent funding but a one off allocation on application considered on a case by case basis with regard to particular circumstances.
- 5.85 Access to the available funds should be at the discretion of the Attorney General who could consider advice from an advisory panel comprising

⁶⁹ An applicant, having invoked an alternative jurisdiction, may subsequently apply for such an Order if the alternative application failed for want of jurisdiction (lacks power to meet the object of the claim) (ss 724(4)).

unions, employers and the Pay Equity Unit proposed to be incorporated in Fair Work Australia (See Chapter 7).

Recommendation 5

That the Government establish a discretionary fund to be administered by the Attorney General for the provision of funding on application for the pursuit of cases in relation to remuneration orders.

Classification and remuneration benchmarks

- 5.86 The Queensland Industrial Relations Commission recommended an investigation of the 'feasibility of advisory classification and remuneration benchmarks to provide advice to employees and employers'.⁷⁰ The Brisbane City Council supported the recommendation and pointed out that 'this would be particularly helpful to overcome equity and parity issues for occupations with low wages and poor job security'.⁷¹

Recommendation 6

That Fair Work Australia investigates the feasibility of advisory classification and remuneration benchmarks to provide advice to employees and employers.

Pay equity and modern awards

- 5.87 The Women's Electoral Lobby referred to the organisations that in the past have been able to improve pay equity by using the industrial relations system:⁷²

If we look at the Australian outcomes compared to systems which are less centralised, decentralised, or to some extent collective bargaining systems, the Australian system has proved to be quite effectual. In more centralised systems, outcomes have been better, and the level at which bargaining takes place has been an

70 Queensland Industrial Relations Commission, *Pay Equity Time to Act*, September 2007, p. 10.

71 Brisbane City Council, *Submission No. 23*, p. 4.

72 Ms Suzanne Hammond, Industrial Relations Spokesperson, Women's Electoral Lobby, *Transcript of Evidence*, 14 May 2009, p. 2.

important determinant in pay equity outcomes. So in the past we have used the industrial system to provide a better outcome ... Again, that is why we emphasise the use of the formal industrial system and the importance of the award system.⁷³

Variation of Awards for work value reasons

5.88 Fair Work Australia must review modern awards every four years and, during a review, may make new awards, or vary or revoke existing awards (s. 156). During these reviews, Fair Work Australia may vary minimum wages in awards only if this is justified for work value reasons (s. 156 (3)). Under s. 156 (4) ... 'work value reasons' are defined as:

...reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:

- (a) the nature of the work;
- (b) the level of skill or responsibility involved in doing the work;
and
- (c) the conditions under which the work is done.

5.89 Historically, an assessment of 'work value' has not included valuation of comparable worth.⁷⁴

5.90 The fact that there has been no successful application to have federal equal remuneration provisions remedy gender based undervaluation of work shows the need for specific measures, including measures explicitly directed at equal remuneration. The obligation to achieve equal remuneration for work of equal or comparable value should result in approaches at least equivalent to the states.

5.91 It has been argued that such an amendment would ensure consistency of conditions for a modern award variation with the equal remuneration principles of the modern awards objective and the minimum wages objective.⁷⁵ The Queensland principle notes that relevant matters should include:

73 Ms Suzanne Hammond, Industrial Relations Spokesperson, Women's Electoral Lobby, *Transcript of Evidence*, 14 May 2009, p. 2.

74 National Pay Equity Coalition, *Submission 118*, p. 12.

75 National Pay Equity Coalition <https://senate.aph.gov.au/submissions/committees/> -

Whether there has been some characterisation or labelling of the work as female;

Whether there has been some underrating or undervaluation of the skills of female employees;

Whether remuneration in an industry or occupation has been undervalued as a result of occupational; segregation or segmentation;

Whether there are features of the industry or occupation that may have influenced the value of the work such as the degree of occupational segregation, the disproportionate representation of women in part-time and casual work, low rates of unionisation, limited representation by unions in workplaces covered by formal or informal work agreements and other considerations of type; or

Whether sufficient and adequate weight has been placed on the typical work performed and the skills and responsibilities exercised by women as well as the conditions under which the work performed and other relevant work features.

- 5.92 The Queensland Nurses Union also stated that gender pay equity goes beyond 'work value' and *Fair Work Act* may need re-examination.⁷⁶ As suggested during the consideration of the Bill, s. 156(4) should be amended to include:

(d) evidence that the work, skill and responsibility required or the conditions under which the work is done have been historically undervalued on a gender basis.

Recommendation 7

That s. 156(4) be amended to include:

(d) evidence that the work, skill and responsibility required or the conditions under which the work is done have been historically undervalued on a gender basis.

- 5.93 It would be counterproductive if this inclusion were to enable Fair Work Australia to not hear an application under clause 302 because an adequate

⁷⁶ Mr Stephen Ross, Industrial Officer, Queensland Nurses Union, *Transcript*, 31 March 2009, p. 53.

alternative remedy was available (s. 71). An assessment needs to be made as to whether proceedings arising from the application to vary a minimum rates award would be able to have regard to the history of the award including whether there have been any assessments of the work in the past and whether remuneration has been affected by the gender of the workers.

Award variation on work value grounds to achieve Modern Awards Objective [s. 157]

- 5.94 The Full Bench of Fair Work Australia may create, vary or revoke modern awards outside the four year review period on work value grounds if it considers this is necessary to achieve the modern awards objective (s. 157) or if the award is referred to it under the *Human Rights and Equal Opportunity Commission Act 1986* (s.161) (see below).
- 5.95 Subsection 157(2) provides that Fair Work Australia may make a determination varying modern award minimum wages if Fair Work Australia is satisfied that:
- (a) the variation of modern award minimum wages is justified by work value reasons; and
 - (b) making the determination outside the system of annual wage reviews and the system of 4 yearly reviews of modern awards is necessary to achieve the modern awards objective.⁷⁷
- 5.96 As noted above, the modern awards objective includes taking into account equal remuneration for work of equal or comparable value. However, Commissioner Fisher, Queensland Industrial Relations Commission, argued that it is unclear whether pay equity cases would automatically trigger the work value provisions. She said that, while pay equity is a subset of 'work value', to avoid future argument it should be made abundantly clear in the legislation that gender pay equity is a reason for justifying award variation of minimum wages outside the four yearly review.⁷⁸

77 Note: As Fair Work Australia is varying modern award minimum wages, the minimum wages objective also applies (see section 284).

78 Commissioner Glenys Fisher, Queensland Industrial Relations Commission, *Transcript of Evidence*, 31 March 2009, p. 4.

Recommendation 8

That s. 157 be amended to ensure consistency with s. 156 and include a definition of ‘work value reasons’ defined as:

... reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:

- (a) the nature of the work;**
- (b) the level of skill or responsibility involved in doing the work;**
- (c) the conditions under which the work is done [S 156(4)].**
- (d) evidence that the work, skill and responsibility required or the conditions under which the work is done have been historically undervalued.**

Awards modernisation process

- 5.97 The award modernisation process is aimed at achieving awards that are simple and easy to understand; provide a minimum safety net for terms and conditions of employment; are economically sustainable; and promote collective bargaining. The review of existing awards provides an opportunity incorporate the necessary changes to address pay equity issues. The achievement of pay equity through the award process should be enhanced by the following changes:

Recommendation 9

That the Government:

- elevate pay equity to be a clear objective of modern awards;**
- expand scope of variation and amendment of awards on work value grounds to explicitly include pay equity, applying a gender neutral work valuation’ require Fair Work Australia to be satisfied that the award satisfies pay equity criteria.**

- 5.98 The awards modernisation process began in April 2008 on request by the Minister for Education, Employment and Workplace Relations (28 March 2008) to the Australian Industrial Relations Commission (AIRC). The AIRC is required to complete the process by 31 December 2009. The purpose of the awards modernisation process is to review and rationalise awards operating in the federal industrial relations system. Award modernisation is being undertaken in four stages – each of which involves pre-drafting consultations, the release of exposure draft awards, further consultation on the drafts and the publication of modern awards.
- 5.99 The first 17 ‘priority’ awards to be finalised under award modernisation were published by the AIRC on 19 December 2008 but are not due to come into effect until January 2010 (or thereafter). The 17 modern awards will replace some 500 awards that currently cover those industries and occupations.⁷⁹
- 5.100 Award modernisation provides an opportunity to consider and implement pay equity principles. The AIRC must have regard to a number of factors when performing awards modernisation, including:
- the need to help eliminate discrimination;
 - to promote the principle of equal remuneration for work of equal value;
 - to assist employees balance their work and family responsibilities effectively; and
 - improve retention and participation of employees in the workforce.⁸⁰
- 5.101 Fair Work Australia is required to ensure that modern awards, together with the National Employment Standards, provide a ‘fair and relevant minimum safety net of terms and conditions’ taking into account’ the following factors:
- relative living standards and the needs of the low paid;

79 The Stage 1 draft awards are: Black Coal Mining Industry Award 2010 ; Clerks – Private Sector Award 2010; Fast Food Industry Award 2010; General Retail Industry Award 2010; Hair and Beauty Industry Award 2010; Higher Education Industry – Academic Staff – Award 2010; Higher Education Industry – General Staff – Award 2010; Horse and Greyhound Training Award 2010; Hospitality Industry (General) Award 2010; Manufacturing and Associated Industries and Occupations Award 2010; Rail Industry Award 2010; Security Services Industry Award 2010; Textile, Clothing, Footwear and Associated Industries Award 2010.

80 S576B *Workplace Relations Act 1996*; Request under Section 576(1) – Award Modernisation Consolidated Version Issue Julia Gillard, Minister for Employment and Workplace Relations, 18 December 2008, paragraph 3 (e)(f)p. 2.

- the need to encourage collective bargaining;
- the need to promote social inclusion through increased workforce participation;
- the need to promote flexible modern work practices and the efficient and productive performance of work; and the
- principle of equal remuneration for work of equal or comparable value (s.134)

5.102 Together these points constitute the modern award objective.

5.103 The *Fair Work Act* guarantees that modern awards will be 'fair' and provide relevant minimum terms and conditions, and, in achieving this goal 'the principle of equal remuneration for work of equal or comparable value is to be 'taken into account.' While equal remuneration is explicitly referred to as part of the modern awards objective it is unclear what weight will be given to the principle or what methodology will be used to apply when establishing modern awards.

5.104 The Queensland Council of Unions emphasised the need for a 'robust and comprehensive award system with the achievement of pay equity as an underlying objective of modern awards'.⁸¹ The Queensland *Industrial Relations Act 1999* requires the Queensland Industrial Relations Commission to 'ensure an award provides for equal remuneration for work of equal and comparative value' in paragraph 126 (e).

5.105 Qld *Industrial Relations Act 1999* s.126 relevantly provides that:

The commission must ensure an award –

(a) does not contain discriminatory provisions; ...

(e) provides for equal remuneration for men and women employees for work of equal or comparable value; ...

(j) takes into account employees' family responsibilities.

5.106 This is a clearer statutory duty to guarantee pay equity in the award process than its equivalent under federal law.

81 Ms Amanda Richards, Assistant General Secretary, Queensland Council of Unions, *Transcript of Evidence*, 31 March 2009, p. 12.

Recommendation 10

That s. 134 of the *Fair Work Act 2009* be amended so as to require that an award must provide for equal remuneration for men and women employees for work of equal or comparable value.

5.107 Many women are award-dependent and therefore it is essential that the award modernisation process ensures that the skill, responsibility, the nature and conditions of the work, are taken into account in determining classification structures in modern awards.⁸²

5.108 Associate Professor Taksa and Dr Anne Junor suggested that many women are award-dependent and therefore it is essential that the awards modernisation process ensures that the skill, responsibility, nature and conditions of the work, are taken into account in determining classification structures in modern awards:

If the Award Modernisation process is not carried out under such a principle of equal or comparable value, the rationalisation process, based on industry awards, will simply repeat the history of the 1969 and 1972-74 equal pay and equal value exercises, whose limitations have only partially been addressed forty years later. Requirements under this legislation were often met by slotting female classifications in underneath male, without consideration being made to genuine work value assessments. In many industries, such work value assessments have never been finalised. At best the Minimum Rates Adjustment process of the late 1980s provided some needs-based compression at the low-wage end.⁸³

5.109 Thus:

... it is essential that each Modern Award contain a clause allowing consideration of work value in the context of the award's history, without relying on arguments based on discrimination or comparisons, and that if comparisons are undertaken they may be with relevant work in any occupation, industry or workplace. If such comparisons reveal inequity, then an application for award variation may be made outside the four-yearly review cycle.⁸⁴

82 Associate Professor Taksa and Dr Anne Junor, *Submission No. 109*, p. 5.

83 Associate Professor Taksa and Dr Anne Junor, *Submission No. 109*, p. 5.

84 Associate Professor Taksa and Dr Anne Junor, *Submission No. 109*, p. 9.

5.110 A number of additional risks have been identified:

In respect to that minimum wage-fixing, the Fair Work Act does pick up the notion that, in setting minimum wages and in adjusting the new modern awards, Fair Work Australia will have to have regard to the principle of achieving equal or comparable equal pay for work of equal or comparable value. Having put that objective into the legislation, that enables but does not guarantee that minimum wages can be set and adjusted having regard to the need to look at gender differentials in pay. Fair Work Australia has the power to review those minimum wages. It has to do so every year. It can also do so on application by the Sex Discrimination Commissioner. It can also review the other safety net matters such as leave and hours of work and penalties and those sorts of things – which are an enormous component of the actual differential in men’s and women’s wages – at any time on application if the application is based on a work value ground.⁸⁵

5.111 The Queensland Nurses Union, expressed concern that the award modernisation process may lead to the loss of occupational identity and this will disadvantage nurses’ ability to achieve pay equity.⁸⁶ The maintenance of nursing occupational awards in award modernisation process is important as scoping it in the health and welfare services awards will ‘have an adverse effect on nursing’s capacity to achieve gender equity’.⁸⁷

5.112 The Pharmacy Guild of Australia also sought the inclusion of all community pharmacy employees under a national pharmacy award rather than the retail award because of the health care focus arguing that the latter would create ‘a significant cost imposition on the community pharmacy industry for no reason and likely to have a negative effect on the employment opportunities and pharmacy workforce participation for women’.⁸⁸

5.113 The Women’s Electoral Lobby (WEL) emphasised that because women are reliant on minimum wages and safety nets more than men that there should be a levelling up rather than a levelling down from the

85 Ms Catherine Bowtell, Senior Industrial Officer, Australian Council of Trade Unions, *Transcript of Evidence*, 3 April 2009, pp. 1-2.

86 Mr Steven Ross, Industrial Officer, Queensland Nurses Union, *Transcript of Evidence*, 31 March 2009, p. 50.

87 Mr Steven Ross, Industrial Officer, Queensland Nurses Union, *Transcript of Evidence*, 31 March 2009, p. 50.

88 Pharmacy Guild of Australia, *Submission No. 127*, p. 7.

award minimisation process.⁸⁹ WEL believes that that the new modern awards should be compared to relative enterprise agreements rather than the lowest awards.⁹⁰

5.114 WEL also raised concerns in relation to the ‘speed and efficiency with which the award modernisation process is happening, there is little attention paid to equal remuneration provisions set down in the modernisation process’.⁹¹

5.115 Thus:

It cannot be assumed that prior work value assessments, were bias-free. The history of the award is to be considered, with consideration of whether remuneration has been affected by gender. Indicators include:

- some characterization or labelling of work as ‘female’;
- some under-rating of the skills of female employees;
- whether the work is an industry or occupations undervalued because of segregation or segmentation;
- industry features that may have affected work value such as degree of segregation, concentration of women in part time or casual work, low unionization, low workplace union representation in workplaces characterized by formal or informal work arrangements, incidence of consent awards and agreements, and other considerations of that type; and
- whether sufficient weight has been given to typical work performed and the skills and responsibilities exercised by women, conditions under which the work is performed and other relevant work features.⁹²

5.116 The Australian Services Union argued that unless the award rates are equitable, then the reliance of collective bargaining on award rates ‘will be flawed in the sense that the lowest minimum rate will be the starting point for negotiations, which in the vast majority of cases, will not include any kind of gender or pay equity comparison’.⁹³ UnionsWA stated:

89 Ms Suzanne Hammond, Industrial Relations Spokesperson, Women’s Electoral Lobby, *Transcript of Evidence*, 14 May 2009, p. 2.

90 Ms Suzanne Hammond, Industrial Relations Spokesperson, Women’s Electoral Lobby, *Transcript of Evidence*, 14 May 2009, p. 2.

91 Ms Suzanne Hammond, Industrial Relations Spokesperson, Women’s Electoral Lobby, *Transcript of Evidence*, 14 May 2009, p. 2.

92 Associate Professor Taksa and Dr Anne Junor, *Submission No. 109*, p. 11.

93 Ms Julie Bignell, Branch Secretary, Australian Services Union, *Transcript of Evidence*, 31 March 2009, p. 66.

... that injecting gender equity considerations explicitly into the current award modernisation process is something that should be considered, at the same time ensuring that awards retain relevance and coverage. Despite a trend over the last two decades to decentralisation and away from award coverage, there is still the need for clear minimum standards ... but also classifications that can be then examined and referred to for the establishment of women's pay rates.⁹⁴

Recommendation 11

That the Australian Industrial Relations Commission report to the Committee prior to the finalisation of the awards in the awards modernisation process in relation to how pay equity principles have been achieved.

5.117 The Australian Services Union provided an example of a private sector award for clerks stating that 'it has not been benchmarked against any comparative occupations, it is simply an amalgam of classifications and rates of pay' ... There has been no examination of this award in a pay equity sense. Indeed the award will result in a decrease of take-home pay for many Australian women and men once it comes into operation' and 75 per cent of employees under this award are female.⁹⁵

5.118 Commissioner Fisher stated:

Fair Work Australia has power under the act to vary modern award wages outside the system of four yearly reviews if satisfied the variation is justified on work value grounds and such variation is necessary to achieve the modern award's objective. The modern award's objective includes taking into account equal remuneration for work of equal or comparable value. The issue is this. Given that work value is the first consideration that needs to be considered under this provision, it is not sufficiently clear in my view that pay equity cases would automatically be taken to satisfy this criteria. Although it could be argued that pay equity is a

94 Ms Simone McGurk, Assistant Secretary, UnionsWA, *Transcript of Evidence*, 5 November 2008, pp. 31-32.

95 Ms Julie Bignell, Branch Secretary, Australian Services Union, *Transcript of Evidence*, 31 March 2009, p. 66.

subset of work value, I would recommend, perhaps out of an abundance of caution and in an endeavour to avoid future argument, that the legislation make clear in the modern awards section that pay equity is a reason for justifying award variation of minimum wages outside the four yearly reviews.⁹⁶

Recommendation 12

That Fair Work Australia report to the Parliament within the annual reporting process on any changes to the awards after 1 January 2010 that may have the potential to impact on pay equity.

5.119 The Australian Services Union commented that Australia:

... is highly gender segmented in terms of the workforce, the only chance has been the award system where you have been able to actually designate pay rates and proper classification structures based on what people actually do, not what they are called, but what they actually do, what their skills and knowledge are, and what their qualifications are. This is a seriously retrograde step that the award modernisation process has taken with respect to women's pay in Australia ... the modern award system must recognise skills and knowledge; it must be consistent for occupations, such as the clerical award, and it must not depend upon designating pay and conditions based on job titles rather than qualifications, skills and abilities, which is the case at the moment.⁹⁷

Individual flexibility agreements

5.120 S. 65 of the *Fair Work Act* allows for arrangements that suit the particular needs of employers and employees in enterprise agreements provided they make employees better off overall compared to their award. These flexibility arrangements are designed to assist employees balance the family commitments with work:

96 Commissioner Glenys Fisher, , Queensland Industrial Relations Commission, *Transcript of Evidence*, 31 March 2009, pp. 3-4.

97 Ms Julie Bignell, Branch Secretary, Australian Services Union, *Transcript of Evidence*, 31 March 2009, p. 67.

Any individual flexibility arrangement made under an agreement must be genuinely agreed to by the employer and employee and must make the employee better off than they were under the enterprise agreement. This means that an employee or employer cannot be coerced to make an individual flexibility arrangement and they cannot be used to undermine an employee's terms and conditions of employment.⁹⁸

5.121 The Australian Industrial Relations Commission introduced individual flexibility agreements into modern awards which allow employees and employers to reach agreement about modifying the terms of the award. These agreements must be in writing and a copy provided to the employee but do not have to be lodged with Fair Work Australia.

5.122 While this arrangement has benefits, there is limited capacity to monitor any pay equity implications of these agreements as there is currently no requirement to lodge them. ACTU and Joint State Union Peak Councils raised concerns that use of individual flexibility arrangements may undermine terms and conditions reached through collective bargaining or set in the safety net. The unions called for appropriate protections against the use of individual flexibility clauses that may adversely affect women through the implementation of lower terms and conditions.⁹⁹

5.123 The New South Wales Office for Women's Policy commented in relation to the variation of award clauses that

Any such variations [monetary entitlements such as overtime, penalty rates and allowances] are achieved through unregulated individual flexibility agreements between the employer and an individual employee, and so are to be distinguished from clauses that are common in existing awards and agreements permitting flexibilities departing from some award requirements to be negotiated at the workplace level. The concern is that this may have the potential to further reduce the total earnings of award-reliant women who would otherwise be entitled to such payments under the standard terms of their award, thus neutralising other efforts to reduce the gender earnings gap. In particular, it will potentially increase male/female earnings disparities within awards if women are effectively forced to trade-off these benefits

98 Department of Education, Employment and Workplace Relations, *Supplementary Submission No. 58.2*, p. 25.

99 Australian Council of Trade Unions and Joint State Union Peak Councils, *Submission No. 125*, p. 24.

for more family friendly hours and working arrangements. The lack of the collective dimension adds to the risk that individual women may feel pressured to accept loss of wages and other conditions in return for much needed flexibilities.¹⁰⁰

5.124 Therefore:

this should be carefully monitored in a way consistent with the protection against disadvantage for individual employees contained in clause 2(c) of the award modernisation request. This issue may be dealt with as part of the AIRC specific reporting obligations under paragraph 23 of the award modernisation request. One aspect of FWA's jurisdiction could be the monitoring of the impact of the operation of the model individual flexibility clause upon gender based earnings differentials in awards.¹⁰¹

5.125 Under s.124 of the *Fair Work Act* 2009, the Fair Work Ombudsman must prepare and publish a Fair Work Information Statement which must include information on individual flexibility arrangements. An employee's request and employer's response to that request must be in writing but do not have to be lodged with Fair Work Australia. While these agreements should be submitted to Fair Work Australia for research purposes to enable the Ombudsman to fulfil this obligation, an approval process should not be introduced.

5.126 Requiring lodgement individual flexibility arrangements would heighten awareness of the need to take care and ensure that the 'not worse off' consideration is taken into account. This information would also be available to determine the aggregate pay equity implications to be assessed.

5.127 One aspect of the research to be conducted could be in relation to whether there is a disproportionate impact on women in low paid employment. Accordingly the Committee recommends that:

Recommendation 13

That s. 65 of the Fair Work Act be amended to require that individual flexibility arrangements are lodged with Fair Work Australia.

100 New South Wales Office for Women's Policy, *Submission No. 153*, p. 30.

101 New South Wales Office for Women's Policy, *Submission No. 153*, p. 30.

National Employment Standards

- 5.128 The National Employment Standards (NES) were developed to set out minimum standards that apply to employees in relation to:
- Minimum weekly hours;
 - Requests for flexible working arrangements
 - Parental leave and related entitlements;
 - Annual leave;
 - Personal/carer's leave and compassionate leave;
 - Community service leave;
 - Long service leave;
 - Public holidays;
 - Notice of termination and redundancy pay; and
 - Fair Work Information Statement.
- 5.129 Division 3 (13) provides that employees who have responsibility for the care of a child under school age may request flexible arrangements and provides as examples of changes in working arrangements: change in hours of work, changes in patterns of work and changes in location of work.
- 5.130 The Australian Human Rights Commission was critical of the NES in that the right to request flexible work arrangements is confined to children under school age; employees have had at least 12 months continuous service and does not apply to casual workers.¹⁰² Women are less likely to have job tenure and therefore are less likely than men to have been in a particular workplace for more than 12 months.
- 5.131 It is necessary to recognise demographic changes and to accommodate caring responsibilities across the life cycle.¹⁰³ New Zealand and the United Kingdom have a right to request for anyone with caring responsibilities.¹⁰⁴ The Sex Discrimination Commissioner commented on the importance of the NES to men, 'under the jurisprudence and case law that exist, women actually have a right to request, it is men who do

102 Commissioner Elizabeth Broderick, Sex Discrimination Commissioner, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, p. 6.

103 Commissioner Elizabeth Broderick, Sex Discrimination Commissioner, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, p. 6.

104 See Ms Juliet Bourke, Chair, Equal Employment Opportunity Network of Australasia, *Transcript of Evidence*, 26 September 2008, p. 87.

not.¹⁰⁵ The NES extends the right to request to any employee who is a parent.

- 5.132 The Equal Opportunity Network of Australasia suggested that the limited right to request had ramifications for productivity and it 'is not where the market is at':

the research that we had out of the task force on care costs showed that 67 per cent had refused a promotion and something like 44 per cent had taken a job below skill level if it would give them flexibility.¹⁰⁶

- 5.133 The Brisbane City Council suggested that allowable requests from employees for more flexible work arrangements be broadened in two main respects:

- To apply to all employees irrespective of reason or at least those with a broader range of responsibilities such as children of all ages and dependent adults, including ageing parents and other relatives; and
- Expand the range of changes in working arrangements.¹⁰⁷

- 5.134 Dr Sara Charlesworth commented on the exclusion of casual workers from some of the provisions of the National Employment Standards:

Given that women make up 60 per cent of casual workers, what seems to be just IR, and not to do with discrimination or pay equity issues, in fact really has quite a profound impact on pay equity.¹⁰⁸

- 5.135 The right to request should apply to all workers including casuals. This is a right to request only and the employer has the right to decline if there are reasonable grounds for doing so. Accordingly, the Committee recommends:

105 Commissioner Elizabeth Broderick, Sex Discrimination Commissioner, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, p. 6; see also Association of Professional Engineers, Scientist and Managers, *Submission No. 121*, p. 9.

106 Ms Juliet Bourke, Chair, Equal Employment Opportunity Network of Australasia, *Transcript of Evidence*, 26 September 2008, p. 88.

107 Brisbane City Council, *Submission No. 23*, pp. 2-3.

108 Dr Sara Charlesworth, Research Fellow, Centre for Applied Social Research, *Transcript of Evidence*, 2 April 2002, p. 24.

Recommendation 14

That the National Employment Standards Division 3 (13) in relation to requests for flexible working arrangements be amended to include all employees.

- 5.136 Further, the Government should also consider the expansion of the list of examples cited to include a reduction in work hours such as part time and job share, that changes to patterns of work should include flexibility to vary standard start and finish times, flex time, working more hours over less days and changing days of work, changes to the span of ordinary hours outside of which shift and overtime penalties apply and changes to location of work including working from home or another location.¹⁰⁹
- 5.137 Annual leave entitlements and parental/carers leave were also highlighted by the Brisbane City Council as needing improvement in the National Employment Standards. While the additional rights in these categories would be of assistance to some employees, this has the potential to add substantial costs for the employer depending on the nature of the tasks involved. The National Employment Standards set minimum standards only and other matters can be dealt with in awards and enterprise agreements where appropriate.
- 5.138 There were also calls for clarification as to what constitutes 'reasonable operational reasons' for an employer to grant or refuse flexible work arrangements.¹¹⁰
- 5.139 There also needs to be some educational support relating to flexible arrangements as there still persists a perception that those seeking these arrangements are less committed to work while they are trying to juggle responsibilities.¹¹¹ Further a survey conducted by Aequus Partners and CCH Australia found that 80 per cent of respondents, mostly Human Resources practitioners rated employees and managers knowledge of the right to request as 'either non-existent or low.'¹¹² The Department of

109 See discussion in Brisbane City Council, *Submission No. 23*, pp. 2-3.

110 City of Perth, *Submission No. 31*, p. 1.

111 Ms Juliet Bourke, Chair, Equal Employment Opportunity Network of Australasia, *Transcript of Evidence*, 26 September 2008, p. 88.

112 Aequus Partners and CCH Australia, 2009, *Wake up call: Few employers are ready for the R2R and time is running out*, Executive Summary, pp. 1-2; media Release "Right to request flexibility"

Consumer and Employment Protection in Western Australia called for Fair Work Australia to 'educate employers and employees about the right to request in the federal National Employment Standards'.¹¹³

Minimum wages case

5.140 Women are more likely than men to be reliant on the minimum wage.

A strong minimum wage is an important factor in improving women's wage outcomes and dealing with the gender wage gap as many women are reliant on minimum wages.¹¹⁴

5.141 The minimum wages objective requires the Fair Work Australia to 'establish and maintain a safety net of fair minimum wages', taking into account the following factors:

- the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth;
- promoting social inclusion through increased workforce participation;
- relative living standards and the needs of the low paid; and
- principle of equal remuneration for work of equal or comparable value (s. 284).

5.142 In relation to a recent decision by the Australian Fair Pay Commission not to increase the minimum wage, the National Pay Equity Coalition and the Women's Electoral Lobby Australia Inc expressed concern that women are more likely to be affected and low paid workers are falling further behind other members of the community who received pay increases, thus compounding the gender wage gap.¹¹⁵ The Working Womens' Centres stressed the importance of keeping awards increases in line with inflation:¹¹⁶

National Employment Standard survey results, 3 September 2009, p. 1 at <http://www.workplaceflexibility.com.au/press_release_3_september_2009.html>.

113 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 4.

114 Community and Public Sector Union State Public Services Federation Group, *Submission No. 107*, p. 14.

115 The National Pay Equity Coalition and the Women's Electoral Lobby Australia Inc, *Supplementary Submission No. 118.3*, pp. 1-2.

116 Working Women's Centres, *Submission No. 119*, p. 4.

The disproportionate representation of women on award and comparatively low wages has meant that minimum wage increases have provided significant benefits for this group of women and provided an effective protective mechanism for gender pay equity. As 60.3 percent of award-dependent workers are women, changes to minimum wage setting and awards will disproportionately affect them.¹¹⁷

5.143 Women are more likely than men to be reliant on the minimum wage and the Australian Catholic Bishop's Conference (ACBC) referred to the decline in the Federal Minimum Wage relative to the Henderson Poverty Line and the importance of this to women.¹¹⁸

5.144 An important a features highlighted by the ACBC is that in the determination of the minimum wage by the Australian Fair Pay Commission uses as a basis a single person without dependents. This has the effect of making it difficult for single mothers to return to work as the cost of child care is not taken into account.¹¹⁹ The ACBC argues that:

In doing so, it has failed to take proper account of the needs of workers with dependants and has failed to have proper regard for the *Family Responsibilities Convention* and anti-discrimination laws that protect workers with family responsibilities.¹²⁰

5.145 The South Australian Government noted that:

Where minimum wages are adjusted to reflect pay equity considerations, these may create some pressures on employment levels due to declining marginal productivity. Where these adjustments have been made in the past, however, they have usually been accompanied by long notice periods and the impact will also be less in those areas where market driven rates are already higher than the minimum wages that will be adjusted, as is the case in some of the areas that would likely be reviewed.¹²¹

5.146 Further, the New South Wales Office for Women's Policy noted that:

...while wages are to be restored to their former status as award provisions, the Fair Work Act provides that minimum wage reviews will be conducted in quite separate proceedings from

117 Working Women's Centres, *Submission No. 119*, pp. 7-8.

118 Australian Catholic Bishops Conference, *Submission No. 64*, p. 5.

119 Australian Catholic Bishops Conference, *Submission No. 64*, p. 3.

120 Australian Catholic Bishops Conference, *Submission No. 64*, p. 3.

121 South Australian Government, *Submission No. 124*, p. 13.

other award variations, with differing statutory objectives (unlike the NSW system where, despite the practice of conducting regular and separate minimum wage proceedings, wages are clearly conceptualised as part of the award system, with the same statutory objectives applied to all award variation matters). The risk is that there may still be a disjunction in the relationship between minimum wage considerations and other award provisions. It is to be hoped that the four-yearly review of all modern awards, as well as any other variation proceedings, will provide relevant opportunities to bring together the consideration of these matters.¹²²

- 5.147 In relation to the additional cost to the employers, in referring to the recent decision not to grant an increase to the minimum wage the National Pay Equity Coalition and the Women's Electoral Lobby commented that:

The reasoning for the Decision is flawed in arguing that an increase would worsen unemployment. Not only does the Decision harm women and low paid by not granting them an increase when other workers have received annual increases of 4.6% but it also is a retrograde step in addressing the gender wage gap ... The AFPC also chose to ignore international research from other Organisations such as the OECD which found that 'there is no significant direct impact of the minimum wage on the unemployment rate.'¹²³

Enterprise agreements

- 5.148 The Fair Work Bills' regulatory impact analysis states that while employers can tailor agreements to their business there is a strong safety net for employees. An enterprise agreement must not contravene the National Employment Standards but may include terms that are ancillary or supplementary to the NES. An enterprise agreement must be lodged with Fair Work Australia for approval and must pass a number of tests including the Better Off Overall Test. Parties are required to bargain in 'good faith' (Division 8 Subdivision A). The Independent Education Union of Australia (Qld and NT) observed that Western Australia was the first state to introduce 'good faith bargaining' and is also the state with the

122 New South Wales Office for Women's Policy, *Submission No. 153*, p. 28.

123 National Pay Equity Coalition and Women's Electoral Lobby, *Supplementary Submission No. 118.3*, p. 1.

largest pay equity gap.¹²⁴ The IEUA cautioned that any possible relation between the two should be monitored.¹²⁵

- 5.149 Under s. 195, a term of an enterprise agreement is a discriminatory term to the extent that it discriminates against an employee covered by the agreement on the basis of the employee's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- 5.150 Although equal remuneration for work of equal or comparable value is a permitted matter for the purposes of collective bargaining, there is no explicit legal requirement that the parties must do so. Nor is there any legal requirement that Fair Work Australia not approve an enterprise agreement unless the agreement is necessary to achieve pay equity or implements pay equity. Traditionally, collective bargaining and collective agreements have not been used as often as they could to promote equal pay for work of equal value, both in Australia and in other jurisdictions.
- 5.151 The *Fair Work Act 2009* provides for collective enterprise agreements that may be single or multi-enterprise agreements and the right to be represented during the bargaining process. The capacity to bargain across more than one employer would encourage bargaining in small enterprises where the employer does not have a human resources function, and where the employer is effectively constrained from workplace bargaining due to the nature of the product or service market within which they operate. Examples of sectors of low paid, female dominated sectors that should have the opportunity to effectively bargain and participate in multi employer bargaining include:
- the health and community services sector where the employer is often dependent upon government funding and has little flexibility to increase the price they charge for services. Accordingly they cannot meet new labour costs on a workplace by workplace basis;
 - the contract cleaning and contract catering industries where labour costs account for a significant proportion of the cost of the business. In these industries employers are unable to raise prices due to the competitive nature and short duration of supply contracts; and

124 Miss Sophie Ismail, Industrial Officer, Queensland and Northern Territory Branch, Independent Education Union of Australia, *Transcript of Evidence*, 31 March 2009, p. 27.

125 Miss Sophie Ismail, Industrial Officer, Queensland and Northern Territory Branch, Independent Education Union of Australia, *Transcript of Evidence*, 31 March 2009, p. 27.

- franchised stores and restaurants where the employer has no real capacity to bargain on a workplace by workplace level.¹²⁶

5.152 There is no distinction made between agreements negotiated with or without union representation. In industry sectors such as aged care:

That is where the facilitative bargaining for the low paid can help because it is available on a multi-employer basis. In the funded sector, you have a lot of small employers often with no HR function. I am thinking about community services, disability services and those sorts of places. The typical workforce is a part-time female workforce of, I think the ASU estimates, about eight people, so they are not a big collective themselves; voluntary committee of management.¹²⁷

Those employers' hands are tied in improving their workers' wages, because they only have what they are funded to do, and they are also in that classic situation where any increase in wages is at the cost of service to the client group to whom they are all incredibly committed.¹²⁸

5.153 While unions strongly supported the introduction of multi-enterprise agreements, the New South Wales Office for Women's Policy cautioned that:

...the Fair Work Act makes provision for low paid multi-employer bargaining, which may present a possible avenue to improve enterprise-based outcomes in low paid, feminised areas. However this development should be treated with some caution as while, where it is prevalent, collective bargaining has proven outcomes in raising wages and conditions, historically enterprise bargaining has achieved limited outcomes for gender pay equity overall.¹²⁹

Pay equity, agreements and Queensland *Industrial Relations Act*

5.154 In contrast to the Fair Work Act, the *Queensland Industrial Relations Act 1999* (s. 156 (1) (i)-(iii) s.156 (m)) ensures that an agreement is not certified unless it meets pay equity standards. Section 156 provides that:

126 Australian Council of Trade Unions (ACTU) and Joint State Union Peak Councils, *Submission No. 125*, p. 23.

127 Ms Catherine Bowtell, Senior Industrial Officer, Australian Council of Trade Unions, *Transcript of Evidence*, 3 April 2009, p. 7.

128 Ms Catherine Bowtell, Senior Industrial Officer, Australian Council of Trade Unions, *Transcript of Evidence*, 3 April 2009, p. 7.

129 New South Wales Office for Women's Policy, *Submission No. 153*, p. 19.

- (1) The commission must certify the agreement if, and must not certify the agreement unless, it is satisfied –
- (l) for an agreement other than a multi-employer agreement or project agreement, the employer –
- (i) remunerates all men and women employees of the employer equally for work of equal or comparable value; or
- (ii) will, because of the agreement if it is certified, remunerate all men and women employees of the employer equally for work of equal or comparable value; or
- (iii) is implementing equal remuneration for work of equal or comparable value for all men and women employees of the employer;
- (m) for a multi-employer agreement or project agreement – the agreement provides for equal remuneration for all men and women employees covered by the agreement for work of equal or comparable value.

Recommendation 15

That the *Fair Work Act 2009* be amended:

- to impose a legal obligation on the parties in a negotiation of a single or multi enterprise agreement that the negotiation and the agreement must include bargaining to achieve pay equity as defined by the Act; and
- to require that Fair Work Australia must not approve an enterprise agreement unless the agreement is necessary to achieve pay equity or implements pay equity.

Employees of non-English speaking background

5.155 FECCA called for a provision in relation to the need to explain adequately to people of non-English speaking background relevant to industrial instruments. FECCA cited the example of the Australian Industrial Relation Commission not certifying an agreement that had not adequately been explained to people in their first language

The ability to negotiate with employers is often unrealistic for women in the CALD community, many of whom lack the confidence and necessary linguistic skills to negotiate fair wage

contracts. The provision of equity support would ensure CALD women employees were assisted in the negotiation of wages and flexible conditions, such as paid maternity leave, that would allow for fairer workforce participation.¹³⁰

- 5.156 FECCA informed that up to five per cent of Australians have low English proficiency, which may lead to issues such as understanding an employee workplace agreement or arrangement.¹³¹

...when there is no requirement that those [employment] agreements are communicated to people in their own language, they are really just signing things they may not understand. Of course people want employment, of course people want to provide for themselves, and they are in an absolutely weak bargaining position.¹³²

- 5.157 Equity issues can be exacerbated by' multiple disadvantages of ethnic background, language, culture and faith, on top of existing gender bias discrimination.¹³³

Culturally and linguistically diverse women placed outside the award and collective bargaining stream under WorkChoices were at a particular disadvantage in individual negotiation. Even for those covered by collective agreements, there is no longer a requirement that the provisions be explained in the community languages of the workplace as a condition for approval. It therefore is welcome news that Fair Work Australia will be given the power to facilitate multi-employer collective awards. Culturally and linguistically diverse women are concentrated in some of the areas to be covered by these awards, such as aged care and cleaning. We submit, however, that Fair Work Australia will need to be given powers to mandate good-faith bargaining and to exercise last-resort dispute settling powers.¹³⁴

130 Federation of Ethnic Communities' Councils of Australia, *Submission No. 50*, pp. 4-5. citing *Re Epona* (PR931064.6.5.03).

131 Mr Peter van Vliet, Director, Federation of Ethnic Communities Councils Australia, *Transcript of Evidence*, 24 October 2008, p. 18.

132 Mr Peter van Vliet, Director, Federation of Ethnic Communities Councils Australia, *Transcript of Evidence*, 24 October 2008, p. 18.

133 Ms Voula Messimeri, Chair, Federation of Ethnic Communities Councils of Australia, *Transcript of Evidence*, 24 October 2008, p. 16.

134 Associate Professor Taksa and Dr Anne Junor, *Submission No. 109*, p. 12.

5.158 To address this issue, FECCA suggested¹³⁵ reinstating a provision that existed under the former *Workplace Relations and Other Legislation Amendment Act 1996* in that stated, in regard to certifying agreements, the explanation of the terms of the agreement must have been undertaken,

...in ways that were appropriate, having regard to the person's particular circumstances and needs. An example of such a case would be where persons included:

- (a) women;
- (b) persons from a non-English speaking background; or
- (c) young persons.¹³⁶

5.159 FECCA further stated that the former Australian Industrial Relations Commission had "...in the past refused to certify agreements which had not been adequately explained to people in their first language".¹³⁷

Recommendation 16

That Fair Work Australia ensure that where a significant proportion of an organisation's employees are from a non-English speaking background, that the explanation of the terms of an employment agreement have been explained in the employee's own language.

Low paid stream

5.160 The segregation of the Australian labour market means there are a number of industries where women workers are in the majority and frequently these industries have the lower pay rates such as aged care, childcare, translators, interpreters and some health workers.

5.161 The four low paid industries are not commensurate types of industries in that retail and hospitality have an over representation of lower skilled

135 Federation of Ethnic Communities Councils of Australia, *Submission No. 50*, p. 5.

136 See *Workplace Relations and Other Legislation Amendment Act 1996, Schedule 8, Division 4 - Certifying Agreements, 170LT (7)* (Cwlth).

137 Federation of Ethnic Communities Councils of Australia, *Submission No. 50*, p. 5, citing *Re Epona* (PR931064. 6. 5.03) the AIRC refused to certify an agreement involving a clothing manufacturer because information provided to the largely NESB workforce was inadequate.

casual positions while property and health have a range of skills.¹³⁸ It could be argued that health and community services and property industries be considered for possible undervaluation of skill in some occupations.

- 5.162 There has been a systemic undervaluation of the skills and qualifications in relation to the work performed by women within the Australian industrial system.¹³⁹ The undervaluation of women's work is a major contributor to the current wage gap:

Some employers enjoy a degree of monopsonistic power in the labour market and find advantage in keeping wages and employment below the level that might be found in a freely operating labour market. This may particularly affect some public sector jobs where the state is the primary, or even the sole, employer of that type of labour and more often women tend to be found in these lower wage paying markets.¹⁴⁰

- 5.163 Of some concern to undervaluation of women's work are the provisions of clause 262(5) of the *Fair Work Act* which references the public interest test. The public interest has consistently been relied on by employers to deny-low paid workers improvements in their conditions of employment and/or rates of pay. The concept of public interest should not be confused with the concept of an individual employer's capacity to pay. To do otherwise would undermine the concept of 'fair' for this is the foundation of the scheme of the federal legislation. CPSU stated:

Most women are familiar with arguments that improvements in women's workforce entitlements such as equal pay, maternity leave and other benefits will result in women losing their jobs. This myth has been argued whenever any positive attempt to improve wages and conditions has been made. However the true picture is that when one examines participation rates both nationally and internationally, the narrowing of the gender wage gap has seen an increase in women's workforce participation. The problem facing Australian policymakers is that while the closing

138 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, p. 9; Mr John Hart, Chief Executive Officer, Restaurant and Catering Australia, *Transcript of Evidence*, 1 April 2009, p. 50.

139 Australian Council of Trade Unions (ACTU) and Joint State Union Peak Councils, *Submission No. 125*, p. 5.

140 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 8.

of the wages gender gap has slowed so has the rate of improvement in women's workforce participation.¹⁴¹

Work value

5.164 Work job evaluations are required to address the historical undervaluation of occupations which depend on women's contributions.¹⁴² CPSU-SPSFG explained:

Wages in occupations and industries where women work haven't increased despite labour shortages and while women have increased education levels this still hasn't provided equality in earnings and career progression.¹⁴³

5.165 The Western Australian Department of Consumer Affairs stated:

Often the skills and work associated with female labour have been seen as natural and innate and, hence, have not been highly valued in the labour market. Women's work is undervalued because of:

- the absence of appropriate classification structures;
- poor recognition of qualifications;
- the absence of previous and detailed assessments of their work; and
- gendered characterisations of the work undertaken by women, and
- inadequate application of previous equal pay measures.¹⁴⁴

5.166 The Victorian Women's Trust commented that:

Defining and valuing skill is a complex and contentious process. Given that women tend to be concentrated in occupations with lower formally recognised skill levels, the starting point is to define and recognise skills below trade level. After more than a decade of reform of the national vocational education and training system Australia now has an extensive system of competency standards that describe what are traditionally regarded as

141 Community and Public Sector Union State Public Services Federation Group, *Submission No. 107*, pp. 5-6 citing OECD Employment Outlook 2008.

142 South Australian Government, *Submission No. 124*, p. 5.

143 Community and Public Sector Union State Public Services Federation Group, *Submission No. 107*, p. 2.

144 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 9.

‘unskilled and semi skilled’ work yet this has had no impact on the pay outcomes for women.¹⁴⁵

5.167 Associate Professor Taksa and Dr Anne Junor emphasised the ... need for a capacity to support a re-evaluation of the skill requirements of jobs with an award (or award-free) history that places them outside the masculinist traditions of skill assessment. These award traditions derive from a model of technical education and trade qualifications that has its origins in the male apprenticeship system. Gradually, in a service economy, these traditions were modified, with the introduction of traineeships, the extension of competency standards into service occupations such as call centre work, and the development of qualifications within the Australian Qualifications Framework, ranging from Certificate III to degree level in areas such as child care and aged care. For example, close to 80 per cent of Personal Care Assistants in Australia have Certificate III qualifications, a credential level that also covers electricians, motor mechanics; sound technicians and wood machinists.¹⁴⁶

5.168 National Pay Equity Coalition and the Women’s Electoral Lobby Australia Inc commented that:

Showing undervaluation requires demonstrating that significant elements of work value have not been taken into account or given enough weight in evaluating the work. A case cannot proceed without sufficient basis that the existing rates are not appropriate for the value of the work. Establishing that the undervaluation is gender-related requires connecting important aspects of the work and how it has been valued with the sex of the workers. The NSW Pay Equity Inquiry provided some indicators of likely gender-related undervaluation (including female dominated occupation, low union membership, high part-time and casual workforce, and little industrial regulation) ... It has to be shown that these (or other) characteristics of the workforce and its industrial history have been related to the undervaluation.¹⁴⁷

5.169 The inclusion of the components around work value should also assist in taking away presumptions about the job and focus on what skills,

145 Victorian Women’s Trust, *Submission No. 123*, p. 2.

146 Associate Professor Taksa and Dr Anne Junor, *Submission No. 109*, p. 13.

147 The National Pay Equity Coalition and the Women’s Electoral Lobby Australia Inc, *Submission No. 118*, p. 17.

knowledge and experience a person needs to do the job and how jobs with equivalent skills, knowledge and experience are categorised and paid. Soft skills such as communication, decision making and pastoral care are undervalued and not recognised as a work skill.¹⁴⁸

5.170 Soft skills and personal attributes used by employers such as:

... 'maturity', 'resilience', 'empathy' and 'sense of humour' as proxies for the skills they are seeking, and even deny their status as skills by explicitly describing them as 'natural'. Such natural attributes are assumed to be 'free gifts', not value-creating skills. Even if the skills are recognised as having been learned, they tend not to be unpacked, but called 'interpersonal', or 'communication' or 'time management' skills, which is a bit like saying a woodmachinist has 'woodworking skills'. Clearly, these skills need to be 'unpacked'. Whilst some of the skills may be somewhat transferable from life experience, jobholders need to learn to apply them in specific work contexts, incorporating them into ongoing work processes, and this capacity is a skill. An examination of competency standards indicates that discrete elements of competence, for example of call centre work or of team leadership may be defined, but what is less likely to be defined in qualifications and in occupational classifications is the way these skills are put together.

A process for auditing intangible skills, at a range of experience levels, particularly in jobs with flat career structures in sectors, occupations, industries where labour shortages are emerging and where women are concentrated.¹⁴⁹

5.171 In the United Kingdom women are also clustered in the child care, cleaning, catering, clerical and cashiering sectors.¹⁵⁰ Of the 50 000 equal pay cases in the Scottish tribunal system, most are from women with equal pay claims and the majority are from the caring and catering sectors.¹⁵¹ The institutional and systematic undervaluation of skills that are considered innate such as caring:

...when we look at women who do caring for children or caring for older people type work, or women who clean or women who

148 Community and Public Sector Union State Public Services Federation Group, *Submission No. 107*, p. 2.

149 Associate Professor Taksa and Dr Anne Junor, *Submission No. 109*, p. 14 and *Supplementary Submission No. 109.1*, p. 5.

150 Ms Emma Ritch, Manager, *Close the Gap*, *Transcript of Evidence*, 11 August 2009, p. 7.

151 Ms Emma Ritch, Manager, *Close the Gap*, *Transcript of Evidence*, 11 August 2009, p. 7.

make the meals for the older people, and compare their jobs in a kind of systematic, analytical way with the jobs of some of the craft workers then we see that they are comparable in terms of worth. So there are cases there to answer.¹⁵²

5.172 The New Zealand experience was that:

Addressing the proportion of the gender pay gap that relates to gender-related undervaluation is also complex. Not all female-dominated occupations are affected by gender-related undervaluation. Collective bargaining and labour market mechanisms have addressed some instances of historic or recent gender-related undervaluation. In some sectors (notably teaching and nursing) there are high levels of collective bargaining, while in others, there is limited bargaining about pay. For reasons outlined elsewhere in this paper it has proven difficult to establish the case for and to negotiate the cross-organisation pay investigations that would be needed to assess and address the undervaluation of an entire occupation. Within-organisation assessments of the relative pay and size of jobs cannot address the overall evaluation of the occupation.¹⁵³

Funding structure

5.173 The Australian Chamber of Commerce and Industry commented that there is limited capacity organisations to bargain freely where funding is limited or constrained:

These organisations are often also subject to additional regulatory obligations which limit their ability to introduce productivity measures or modify staffing arrangements. As a result, relative to other sectors, wage increases in the funded sector may be dampened.¹⁵⁴

5.174 Dr Patricia Todd commented that:

In terms of comparing those industries [such as mining], with the aged-care sector you are talking about the service sector, and labour costs are always a high component, whereas in the mining industry labour costs are a much smaller component and therefore it might be easier for them to respond by increasing the pay. I have

152 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 12; See also Annecto the people network, *Submission No. 59*, p. 1.

153 New Zealand Department of Labour, *Submission No. 148*, p. 12.

154 Australian Chamber of Commerce and Industry, *Submission No. 84*, p. 9.

some sympathy, looking at the aged-care sector, with how it is that they then find the extra money to increase the pay to address that problem.¹⁵⁵

- 5.175 ACCI suggested that in such sectors, additional funding to providers is the only way to alter relative pay outcomes:

In a funded environment, there is simply no additional scope for wage adjustments beyond funding levels. This therefore is a question for those levels of government with responsibility for funding these organisations.¹⁵⁶

- 5.176 Therefore, the extent to which funding decisions contribute to the perpetuation of a gender pay gap, is a matter for governments who have the capacity to address this through their funding decisions:

Potentially, the most significant impact on overall pay disparity could be achieved by Commonwealth, State and Territory governments properly reviewing and uprating their support for the funded and community sectors employing many Australian women.¹⁵⁷

- 5.177 The LHMU commented that workers in aged care do not have their qualifications or shift work financially recognised.¹⁵⁸ If qualifications and experience are incorporated within an agreement, then there is a legally binding element to it.¹⁵⁹ In relation to the pay equity case for child care workers, the LHMU commented that it:

... did provide employees, the industry and the community with recognition of the vital work of the child care sector. The results of the case reaffirmed child care as a valid and sustained career path which underpins the economic progress of the nation.¹⁶⁰

- 5.178 In relation to child care workers, the City of Yarra case study referred to the ASU's argument that:

155 Dr Patricia Todd, Senior Lecturer, Industrial Relations and Human Resources and Co-Director, Consortium for Diversity at Work, Business School, University of Western Australia, *Transcript of Evidence*, 5 November 2008, p. 63.

156 Australian Chamber of Commerce and Industry, *Submission No. 84*, p. 9.

157 Australian Chamber of Commerce and Industry, *Submission No. 84*, p. 9.

158 Ms April Anderson, Delegate, Queensland Branch, LHMU, *Transcript of Evidence*, 31 March 2009, p. 18.

159 Miss Sophie Ismail, Industrial Officer, Queensland and Northern Territory Branch, Independent Education Union of Australia, *Transcript of Evidence*, 31 March 2009, p. 33.

160 Ms Nikki Boyd, Organiser, Queensland Branch, Liquor, Hospitality and Miscellaneous Union, *Transcript of Evidence*, 31 March 2009, p. 17.

... wage rates and allowances needed to be increased to acknowledge the far greater demands on childcare workers that had developed as a result of accreditation; more stringent legal requirements and increased professional development. The union also argued that childcare workers were undertaking regular unpaid overtime to complete their increased duties and were taking far greater responsibility for the health and wellbeing of children than previously.¹⁶¹

- 5.179 Another example is interpreters (61 per cent female) and translators (71 per cent female).AUSIT stated that the decline in wages in real terms meant that they are now being paid below the minimum federal wage level.¹⁶² Much of this work is for the community sector and they work through agencies which tender for contracts.¹⁶³ Qualified and experienced women will find the employment untenable and ‘a waste of educational resources’ with little difference in pay levels for accreditation.¹⁶⁴
- 5.180 The Victorian Trades Hall Council saw government intervention as essential to address the situation because of the failure of the market to deliver pay equity.¹⁶⁵ The Victorian Trades Hall Council commented that the community values cases such as teachers a lot more than professions that are paid more highly and the ‘challenge is to set up structures that represent the community rather than power structures’.¹⁶⁶ Further, a commissioner in Fair Work Australia would be a suitable arbiter.¹⁶⁷
- 5.181 Fair Work Australia should as a matter of urgency conduct job evaluations of these occupations as discussed.

161 Ms Jo Justo, National Industrial Officer, Australian Services Union, *Transcript of Evidence*, 31 March 2009, p. 64.

162 The Australian Institute of Interpreters and Translators Inc, *Submission No. 61*, p. 4.

163 The Australian Institute of Interpreters and Translators Inc, *Submission No. 61*, pp. 9-10.

164 The Australian Institute of Interpreters and Translators Inc, *Submission No. 61*, pp. 9-10; See also discussion in Ms Sarina Phan, President, Australian Institute of Interpreters and Translators Inc, *Transcript of Evidence*, 24 October 2008, pp. 45-54.

165 Ms Jennifer O’Donnell-Pirisi, Women’s Office, Victorian Trades Hall Council, *Transcript of Evidence*, 2 April 2009, p. 72.

166 Ms Ann Taylor, President, Victorian Trades Hall Council, *Transcript of Evidence*, 2 April 2009, p. 76.

167 Ms Barbara Jennings, Women’s Office, Victorian Trades Hall Council, *Transcript of Evidence*, 2 April 2009, p. 76.

- 5.182 Pay increases in these cases have always been phased in and have not resulted in a large number of women losing their jobs.¹⁶⁸ The Governments at the time gave undertakings that they would fund the services to the duly arbitrated award.¹⁶⁹
- 5.183 The Independent Education Union of Australia ascribed the failure to investigate the value and nature of women's work as the 'single greatest factor impeding achievement of equal pay in Australia':
- The undervaluation of women's skills reflects a range of social, historical and industrial factors. Prejudices regarding women as employees and the nature of their skills have interfered with the objective assessment of women's work ... In addition, the work value criteria used by industrial tribunals in some cases have tended to value features which are characteristic of work performed predominantly by men.¹⁷⁰

Aged and community services sector

- 5.184 Mr Anderson from the LHMU would like to see greater pay equity in the aged care sector in relation to recognition of the 'historical undervaluation and increased skill requirements and work value changes', qualifications and experience and an introduction of a skills based classification structure and security of employment.¹⁷¹
- 5.185 While collective agreements are better instruments than individual contracts to reduce the pay gap, the Australian Education Union made the point that:
- ... enterprise bargaining has not delivered pay to adequately value women's experience and skills. Many tasks and so called soft skills such as communication, decision-making and pastoral care go unrecognised as a work skill. A way forward to redress this problem of the gender gap is to have the work that women do properly valued and remunerated. The problem of undervaluation

168 Ms Fran Hayes, Spokesperson, National Pay Equity Coalition, *Transcript of Evidence*, 14 May 2009, p. 8; Ms Suzanne Hammond, Industrial Relations Spokesperson, *Transcript of Evidence*, 14 May 2009, p. 9.

169 Ms Fran Hayes, Spokesperson, National Pay Equity Coalition, *Transcript of Evidence*, 14 May 2009, p. 10.

170 Independent Education Union of Australia, *Submission No. 100*, pp. 5-6.

171 Ms April Anderson, Delegate, Queensland Branch, Liquor, Hospitality and Miscellaneous Union, *Transcript of Evidence*, 31 March 2009, pp. 18-19; see also Dr Patricia Todd, Senior Lecturer, Industrial Relations and Human Resources and Co-Director, Consortium for Diversity at Work, Business School, University of Western Australia, *Transcript of Evidence*, 5 November 2008, p. 61.

of women's work can be redressed through tackling gendered notions of skill and reward that exist in pay and classifications structures in awards and agreements.¹⁷²

5.186 The Chamber of Commerce and Industry of Western Australia commented in relation to the negotiation of wages that:

... some of the industries that have the strongest union representation with the longest history of collective agreement making are in the female dominated health industry.¹⁷³

5.187 Aged and Community Services Tasmania argue that aged care is one of a number of care sectors that are predominantly female and is 'undervalued and underpaid relative to other industries.'¹⁷⁴ Australian Catholic Bishops Conference (ACBC) added:

Pay rates do not reflect the increased work value in this sector ... equity issues disproportionately affect the most vulnerable ... women in professional or managerial roles probably enjoy the most equity post maternity leave and workforce participation arrangements and yet still they face conditions less favourable than their male counterparts. How much more difficult, then, are the challenges faced by women in unskilled, labouring and caring roles frequently in work that is casualised or part time? These workers consequently miss out on other entitlements, such as sick leave, holiday pay and bereavement leave. In addition, the unpredictable hours in casual employment make it difficult to access adequate childcare arrangements. Women in these roles also have lower access to training and more limited opportunities for promotion and career development.¹⁷⁵

5.188 The pay and conditions in the aged care sector are determined by government contracts and service agreements. Wages and salaries constitute between 70 and 80 per cent of agency budgets.¹⁷⁶ The Australian Catholic Bishops Conference stated that cutbacks in the aged care sector will result in a reduction in wages, salaries, training and professional

172 Australian Education Union, *Submission No. 76*, p. 8.

173 Chamber of Commerce and Industry of Western Australia, *Submission No. 72*, p. 19.

174 Aged & Community Services Tasmania, *Submission No. 47*, p. 1.

175 Mr Frank Quinlan, Australian Catholic Bishops Conference, *Transcript of Evidence*, 12 March 2009, p. 1.

176 Mr Frank Quinlan, Australian Catholic Bishops Conference, *Transcript of Evidence*, 12 March 2009, p. 4.

development.¹⁷⁷ The competitive tendering process will put pressure on wages so that the organisation will win the tender.¹⁷⁸

- 5.189 The aged care sector is currently facing financial stress and therefore has limited ability to offer competitive wages which means that the female dominated workforce do not receive the level of remuneration that Aged and Community Services Tasmania believe their work deserves.¹⁷⁹

It would not be uncommon in our services for us to wait until the middle of June for the government to make its decision about whether those services will be ongoing. So when services are funded often on an annual basis, sometimes on a biannual basis, it is almost impossible for women in those workforces to make sensible plans about taking some reasonable time off or for parents – fathers as well – to make reasonable plans about taking substantial time off because you just may not know whether the program is going to exist when you come back from that leave.¹⁸⁰

- 5.190 UnionsWA considered that the care industries that have a common funding source could benefit from multi-employer bargaining as ‘many female dominated industries have found it almost impossible to bargain, partly, they are restricted in taking industrial action and partly because of their work organisation.’¹⁸¹ Further, female workplaces in the services sector ‘have had less to trade off in collective bargaining in terms of inefficiencies and so-called working time flexibility.’¹⁸²

- 5.191 The Australian Catholic Bishops Conference commented that 80 000 Australians are eligible for services but did not receive them due to inadequate funding.¹⁸³ The aged care industry is unable to pass on additional costs to their clients and therefore Government policy in effect caps wage rates and ‘wage inequity across sectors is institutionalised.’¹⁸⁴

177 Mr Frank Quinlan, Australian Catholic Bishops Conference, *Transcript of Evidence*, 12 March 2009, p. 9.

178 Ms Susan O’Connor, Australian Catholic Bishops Conference, *Transcript of Evidence*, 12 March 2009, p. 9. See also Dr Sara Charlesworth, Research Fellow, Centre for Applied Social Research, *Transcript of Evidence*, 2 April 2002, p. 28.

179 Aged & Community Services Tasmania, *Submission No. 47*, p. 1.

180 Mr Frank Quinlan, Australian Catholic Bishops Conference, *Transcript of Evidence*, 12 March 2009, p. 9.

181 Ms Simone McGurk, Assistant Secretary, UnionsWA, *Transcript of Evidence*, 5 November 2008, p. 32.

182 Ms Simone McGurk, Assistant Secretary, UnionsWA, *Transcript of Evidence*, 5 November 2008, p. 32.

183 Mr Frank Quinlan, Australian Catholic Bishops Conference, *Transcript of Evidence*, 12 March 2009, p. 7.

184 Aged & Community Services Tasmania, *Submission No. 47*, p. 2.

There are fewer agencies stepping up to the plate as they cannot agree to provide services at this inadequate funding level.¹⁸⁵

5.192 Research has shown that many women in Tasmania who have had caring responsibilities and are marginally attached to the labour market are attracted to the aged care sector.¹⁸⁶ Funding is needed to provide employment opportunities for women to enter this sector, for career progression and appropriate wages.¹⁸⁷

5.193 Aged and Community Services Tasmania has organisations in both metropolitan and rural communities and made the point that:

Our organisations have the ability to offer employment and increase female participation in the workforce in these communities however funding to the sector needs to provide us with the ability to attract and retain these workers.¹⁸⁸

5.194 In the not-for-profit sector, the reliance on government funding, government funding formulas have not kept pace with the increased costs in this sector and therefore the workers are disadvantaged.¹⁸⁹ Nationally, 40 per cent of aged care facilities are operating at a loss as funding has not kept up with the costs of care.¹⁹⁰

5.195 The skills shortages and the demand for labour in the care sector have not resulted in the negotiation of higher wages.¹⁹¹ In the community services sector which is predominantly a female workforce:

Award pay rates in these sectors have not maintained parity with changes in the community – particularly community's demands for a better skilled workforce to meet the needs of the professional and/or practical, hands-on care level. Changes in such award rates of pay based on either pay equity or work value have been slow to accommodate this changing industrial reality.¹⁹²

185 Mr Frank Quinlan, Australian Catholic Bishops Conference, *Transcript of Evidence*, 12 March 2009, p. 15.

186 Aged & Community Services Tasmania, *Submission No. 47*, p. 2

187 Aged & Community Services Tasmania, *Submission No. 47*, p. 2

188 Aged & Community Services Tasmania, *Submission No. 47*, p. 2.

189 Centacare and the Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane, *Submission No. 6*, p. 2.

190 Mr Darren Matthewson, Chief Executive Officer, Aged and Community Services Tasmania, *Transcript of Evidence*, 25 June 2009, p. 3.

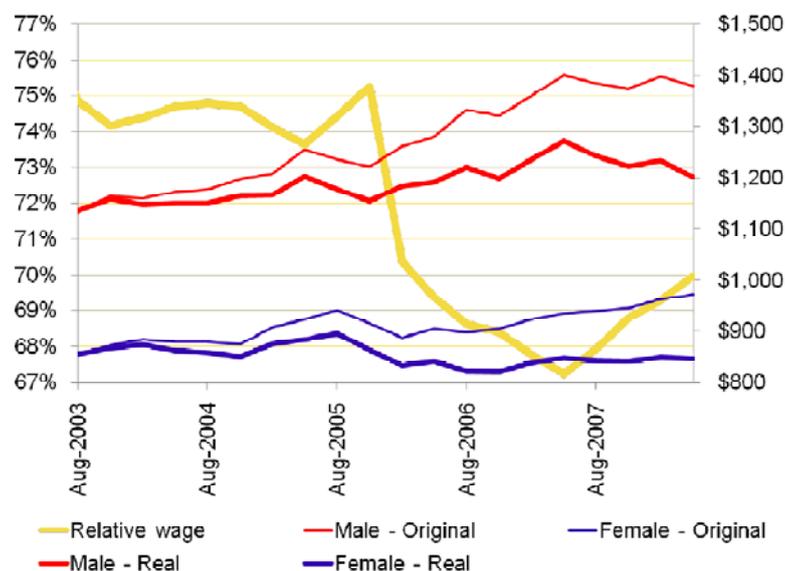
191 Ms Simone McGurk, Assistant Secretary, UnionsWA, *Transcript of Evidence*, 5 November 2008, p. 37.

192 Centacare and the Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane, *Submission No. 6*, p. 1.

5.196 Dr Sara Charlesworth gave the example of:

... the community services sector, because of tight funding arrangements or funding arrangements, which the Australian Productivity Commission found with regard to the aged-care industry have absolutely no relation to the cost of providing aged care, there is some evidence that agencies are cutting back the hours of workers but then expecting them to work their previous set of hours. That is not seen as a pay equity issue, but it has pay equity ramifications.¹⁹³

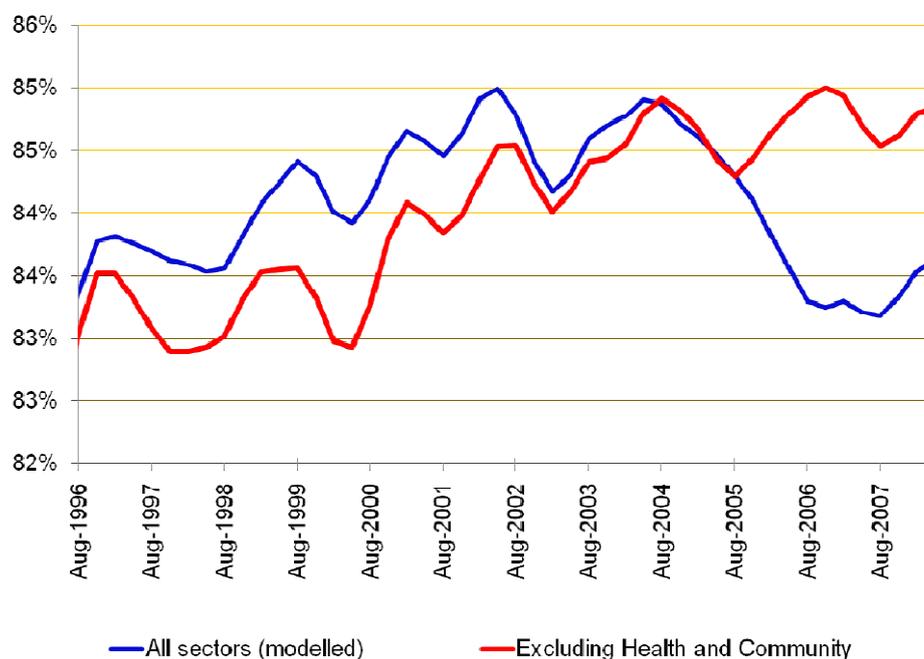
Figure 5.1 Health and community services , relative, original and real wages from 2003 to 2007



Source Department of Families, Housing, Community Services and Indigenous Affairs, unpublished

193 Dr Sara Charlesworth, Research Fellow, Centre for Applied Social Research, *Transcript of Evidence*, 2 April 2002, p. 25.

Figure 5.2 Trend in wage relativities (Average Weekly Earnings Full time Adult Employees)



Source Department of Families, Housing, Community Services and Indigenous Affairs, unpublished.

5.197 Liquor, Hospitality and Miscellaneous Union noted that incapacity of the aged care industry to meet any substantial increase in wages without an increase in Commonwealth funding.¹⁹⁴

It is not consistent with equity and good conscience for a society, or for that matter a government, to impose on those who staff such institutions an undue degree of responsibility for the dilemmas of funding and services that appear to be chronic. Nor is it consistent with good conscience to fail to address patient incapacity to deliver a relatively equivalent level of remuneration for work of equal value. Substantial differences which appear to exist in the effective remuneration available to professional aged care service providers in such institutions and comparable staff in other health and human services institutions in the public or private sectors.

That circumstance should either be justified or redressed; it should not be simply ignored.¹⁹⁵

5.198 Dr Charlesworth described the paying of staff at the bottom level to address funding shortfalls rather the skills of staff, private providers are

194 Liquor, Hospitality and Miscellaneous Union, *Supplementary Submission No. 138.1*, pp. 2-3.

195 Australian Industrial Relations Commission cited in Australian Nursing Federation, *Submission No 97*, p. 11.

not paying penalty rates or travel time between clients as measures to ensure that the services can be provided as an example, notwithstanding the very low legal wages.¹⁹⁶ These practices are 'technically illegal but which have never been chased up because your services would not function.'¹⁹⁷

While there is an assumption that a lot of community services workers are secondary earners in their family, the reality is a lot of them are sole breadwinners and their hours of work are totally critical.¹⁹⁸

5.199 Dr Charlesworth believes that the government needs to 'draw a line in the sand and say 'that from this point on, we are going to incrementally try and improve the situation'.¹⁹⁹ This is an underpaid and undervalued sectors and it is important that governments demonstrated the importance of these services to the community.

5.200 Occupations such as child care, nursing and teaching are more attractive to women wishing to move in and out of an occupation.²⁰⁰

... if women had chosen the fields which men were in, the better paid fields, they would have been worse off than where they started. The reason for that is that the payoff to men and women seems to differ from occupation to occupation. There may be an element of discrimination in some of the professions in this, but the other way of looking at this is the penalty to going in and out of the workforce, or the penalty for wanting to work part time rather than full time, or not the overtime or whatever ... So I think that is part of the explanation of why women choose some areas, that those areas are actually friendlier to them during their lives than other areas.²⁰¹

5.201 The City of Whitehorse commented on the constraints imposed by funding by federal and state governments on the wages paid to the

196 Dr Sara Charlesworth, Research Fellow, Centre for Applied Social Research, *Transcript of Evidence*, 2 April 2002, p. 25.

197 Dr Sara Charlesworth, Research Fellow, Centre for Applied Social Research, *Transcript of Evidence*, 2 April 2002, p. 25.

198 Dr Sara Charlesworth, Research Fellow, Centre for Applied Social Research, *Transcript of Evidence*, 2 April 2002, p. 26.

199 Dr Sara Charlesworth, Research Fellow, Centre for Applied Social Research, *Transcript of Evidence*, 2 April 2002, p. 28.

200 Dr Thomas Karmel, Managing Director, National Centre for Vocational Education Research, *Transcript of Evidence*, 6 November 2009, p. 25.

201 Dr Thomas Karmel, Managing Director, National Centre for Vocational Education Research, *Transcript of Evidence*, 6 November 2009, p. 25.

semiskilled indoor workforce such as child care and aged care not that semiskilled outdoor workers have pay rates and allowances 'that give them a reasonable wage'.²⁰² The Council noted that 'this grants system severely impacts on Council's ability to address pay equity issues in its workforce.'²⁰³

For example a "relative worth" case for child care workers, or aged care workers which are the primary domain of women workers would be desirable from Council's perspective as long as any outcome of such a case was adequately reflected in the grants and subsidies offered to council by state or federal government for the provision of these services.²⁰⁴

5.202 The Australian Nursing Federation also commented that:

Nursing work remains under-valued despite various wage cases, industrial campaigns, the widespread shortage of nurses and the numerous reports, inquiries and reviews into nursing and workforce issues identifying improvements in wages and conditions as key issues in recruitment and retention of nurses and attracting students to nursing education. In nursing, the undervaluing of women's work is one part (albeit a significant one) of the gender pay gap that must be addressed.²⁰⁵

5.203 The National Institute of Labour Studies survey in residential aged care facilities found that personal Care Assistants

... more than nurses, were highly dissatisfied with their pay, feeling that the value and skills of their work were undervalued. Over 60 per cent were dissatisfied or very dissatisfied with their pay levels, particularly with the flat incremental structures that failed to recognise accumulation of skills over time. As a result the turnover rate was and is very high in this industry ... Not only does high turnover reduce the quality of services to vulnerable people, it is a budgetary drain, adding to running costs more significantly than a pay structure genuinely based on work value.²⁰⁶

202 City of Whitehorse, *Submission No. 89*, p. 2.

203 City of Whitehorse, *Submission No. 89*, p. 2.

204 City of Whitehorse, *Submission No. 89*, p. 4.

205 Australian Nursing Federation, *Submission No 97*, p. 2.

206 Associate Professor Taksa and Dr Anne Junor, *Supplementary Submission No. 109.1*, pp. 4-5 citing Richardson S and Martin B, 2004, *The Care of Older Australians: A Picture of the Residential Aged Care Workforce*, National Institute of Labour Studies, Flinders University, Adelaide; Moskos M and Martin B, 2005, *What's Best, What's Worst? Direct Carers' Work in their Own Words*, The National Institute of Labour Studies, Flinders University, Adelaide; Healy J and

- 5.204 The Liquor, Hospitality and Miscellaneous Union noted, however, that the undervaluation of the childcare sector in Australia is entrenched and made the point that:

The introduction of the low paid bargaining stream with the Fair Work Act in July 2009 is unlikely to remedy the low wages in the childcare sector. Parts of the sector have a history of bargaining which despite not delivering real wage increases will exclude access to the low paid stream. Childcare bargaining has largely been undertaken to protect award conditions. Bargaining will not deliver the increase needed to gain parity with the metal trades industry.²⁰⁷

- 5.205 The Australian Council of Social Service made the point that:

A significant proportion of the organisations in the sector are trading corporations and therefore subject to the federal system. As a consequence, workers working in organisations covered by the federal system will be paid rates of pay which do not recognise the inherent inequity that has existed in rates of pay for workers in the community sector for many years. The QIRC decision recognised that this inequity was a result of the historical undervaluation of the work performed because of the high proportion of women working in the sector.²⁰⁸

- 5.206 This situation also has an adverse impact on employers as the former Department of Education, Science and Training found that:

... low morale and poor image ... appears most profound in the aged care sector. Recruitment therefore becomes problematic as women in general, and nurses in particular, seek employment opportunities that are more rewarding emotionally and financially ... And that the disparity between rates of pay for aged care nurses and acute care nurses clearly acts as a major obstacle to recruitment.²⁰⁹

- 5.207 Furthermore:

Moskos M, 2005, *How Do Aged Care Workers Compare With Other Australian Workers?* Adelaide: National Institute of Labour Studies, Flinders University.

207 Liquor, Hospitality and Miscellaneous Union, *Supplementary Submission No. 138.1*, p. 3.

208 Australian Council of Social Service, *Submission No. 147*, p. 2.

209 Community and Public Sector Union State Public Services Federation Group, *Submission No. 107*, p. 8 citing Commonwealth Department of Education, Science and Training, 2001, *Report on Australian Aged Care Nursing: A critical review of Education, training, recruitment and retention in residential and community setting*.

Turnover is very high hidden cost to the employer, for reasons well-illustrated in the EOWA turnover costs calculator. When a staff member leaves, direct and indirect costs of replacement and lost productivity run at well over the cost of a year's salary, over and above the salary paid to the person working in the position. But over and above this productivity loss to the organisation, is the national wastage resulting from under-utilised training investment ... Turnover represents a loss of these skills that is clearly not in the national interest. A similar point can be made about other areas where women's skills are undervalued. It is a commonplace that there would be no shortage of teachers and nurses if more of those who trained for these professions were actually working in them. Pay inequity is the source of 'brain drain' or under-utilisation of human capital that needs to be counted as an offset in the calculation of national productivity.²¹⁰

- 5.208 Associate Professor Taksa and Dr Anne Junor argued there is an under recognition of skills gained through experience:

Yet higher levels of these intangible skills are required of experienced workers. Work processes are sustained through the higher-level application of these skills, based on problem-solving, solution-sharing and informal system-building. The skills in question are developed through experience, on the basis of practice, teamwork and informal leadership.²¹¹

- 5.209 In citing the work of the New Zealand Department of Labour Pay and Employment Equity Unit framework which identifies social and organisational skills, Professor Taksa and Dr Anne Junor commented that:

... different combinations and levels of these skills contribute to outcomes such as service quality, customer focus, teamwork and informal leadership. These integrative skills form the basis of dynamic workplace activities ... methods of identifying these skills could be included amongst resources that for aiding an accurate evaluation of the skill demands of jobs.²¹²

- 5.210 WEL stated:

Whether we work full-time or part-time, we need to be properly paid for the work we do, not for the hours we work, with those

210 Associate Professor Taksa and Dr Anne Junor, *Supplementary Submission No. 109.1*, p. 5.

211 Associate Professor Taksa and Dr Anne Junor, *Submission No. 109*, p. 14.

212 Associate Professor Taksa and Dr Anne Junor, *Submission No. 109*, p. 14.

jobs therefore being considered to be low paid or, for some reason, lesser qualified. What we are talking about is a proper value – addressing a problem of undervaluation. Pay equity is about the undervaluation of women’s work. So we need to unpack the problem, not just consider aggregates.²¹³

- 5.211 It has been argued that in the community based jobs in the not-for-profit sector, funding is through government grants and can not afford increased wages.²¹⁴ The Committee believes, however, that the evaluation, will start a conversation and provide crucial information to the discussion.

If women ‘choose’ to work in these sectors and ‘choose’ to work part time this does not excuse or provide any justification as to why they should not be paid the appropriate value for their work. Such simplistic explanations will not resolve the pay equity problem.²¹⁵

- 5.212 Further, it is not possible to get an equitable job evaluation without the vocabulary. The Scottish experience is that there is a greater acceptance of the concept of job evaluation in the public sector than in the private sector.²¹⁶ People skills are equally important as technical skills and are held by women and men equally.²¹⁷

One of the main problems, of course is that, even though skill, responsibility, the nature of the work and the conditions of the work are the four main criteria under the best equal remuneration principle that we have, we really do have a major problem in defining women’s skills. I do not think that we can rely on a tribunal system for doing that; groundwork has to proceed at the same time.²¹⁸

- 5.213 There is a role for governments as leaders in redressing the situation in these sectors as the minimum standards in the areas of sectors such as childcare and aged care the funding comes from government. While there is a need to present responsible budgets to the electorate, the

213 Ms Suzanne Hammond, Industrial Relations Spokesperson, Women’s Electoral Lobby, *Transcript of Evidence*, 14 May 2009, p. 1.

214 For example see Australian Council of Social Service, *Submission No. 147*, p. 1.

215 Community and Public Sector Union State Public Services Federation Group, *Submission No. 107*, p. 2.

216 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 7.

217 Ms Juliet Bourke, Chair, Equal Employment Opportunity Network of Australasia, *Transcript of Evidence*, 26 September 2008, p. 84.

218 Dr Anne Junor, *Transcript of Evidence*, 26 September 2008, p. 59.

Victorian Trades Hall Council argued that ‘governments can sell changes and priorities that they follow on the basis of what they deliver to the community:

Pay equity is not just about the money in the pocket of the individual who might get better pay; it is about the community. We need to tell the community that it is needed to retain people in various areas and that there is going to be more money spent by their families. It is a bigger picture thing rather than just that really narrow bit ... government should be leading the way ... but it is across everything.²¹⁹

Funding for industrial organisations

- 5.214 Commissioner Fisher also raised the issue of ‘the provision of funding for industrial organisations that conducted pay equity cases in the commission’.²²⁰ The Commissioner argued that the cases conducted under the principle are resource intensive and time-consuming and that funding should be available to industrial organisations because of the ‘extensive work required, the reality that the nature of the occupational groups concerned in pay equity cases meant that they were non-unionised or not heavily unionised, and so it provided an incentive to run cases before the commission.’²²¹
- 5.215 The Victorian Trades Hall Council stated that the provision of funds for cases was a key factor in enabling more activity in Queensland than elsewhere.²²² The Independent Education Union of Australia concurred that cost was one of the reasons that union had not brought a pay equity case.²²³ The ACTU and Joint State Union Peak Councils added that the funding was in recognition of the significant costs involved in

219 Ms Ann Taylor, President, Victorian Trades Hall Council, *Transcript of Evidence*, 2 April 2009, p. 83.

220 Commissioner Glenys Fisher, Queensland Industrial Relations Commission, *Transcript of Evidence*, 31 March 2009, p. 1; see also Dr Christine Short, *Transcript of Evidence*, 19 March 2009, p. 4.

221 Ms Glenys Fisher, Commissioner, Queensland Industrial Relations Commission, *Transcript of Evidence*, 31 March 2009, p. 3.

222 Ms Barbara Jennings, Women’s Office, Victorian Trades Hall Council, *Transcript of Evidence*, 2 April 2009, p. 75.

223 Miss Sophie Ismail, Industrial Officer, Queensland and Northern Territory Branch, Independent Education Union of Australia, *Transcript of Evidence*, 31 March 2009, p. 26, see also Association of Professional Engineers, Scientist and Managers, *Submission No. 121*, p. 6.

participating in equal remuneration cases and requested funding for industrial organisations to assist with this process.²²⁴

- 5.216 The Liquor, Hospitality and Miscellaneous Union reported that the dental assistant's case cost the union \$220 000 in 2005 and received a government grant of \$33 000.²²⁵ The child care case in 2006 cost the LHMU \$160 000 and received a grant of \$50 000.²²⁶
- 5.217 The New South Wales Office for Women's Policy commented that:
- The possible barriers to unions running pay equity cases, especially in an environment of declining union membership and related resource constraints, need to be acknowledged in assessing the success of industrial provisions to promote equal remuneration.²²⁷
- 5.218 The Committee received evidence from the New Zealand Department of Labour in relation to the contestable fund which provided funding for investigation of information that could be used by parties in bargaining processes.²²⁸ The contestable fund had criteria for applications and recommendations were made by a tripartite steering group (consisting of unions, employers and Equal Opportunity Commissioner) to the Minister.²²⁹ The Committee believes that this could provide a useful model in relation to the consideration of this aspect.

Achieving national consistency in pay equity law

- 5.219 Pay equity protection for Australian working women is a patchwork of Commonwealth, state and territory laws and policy instruments in both the industrial relations and anti-discrimination arenas. Not all states incorporate equal remuneration provisions in their legislation, but

224 Australian Council of Trade Unions (ACTU) and Joint State Union Peak Councils, *Submission No. 125*, p.22.

225 Ms Avalon Kent, Industrial Officer, Liquor, Hospitality and Miscellaneous Union, *Transcript of Evidence*, 31 March 2009, p. 15.

226 Ms Avalon Kent, Industrial Officer, Liquor, Hospitality and Miscellaneous Union, *Transcript of Evidence*, 31 March 2009, p. 15.

227 New South Wales Office for Women's Policy, *Submission No. 153*, p. 26.

228 Ms Philippa Hall, Director, Pay and Employment Equity Unit, Department of Labour, New Zealand, *Transcript of Evidence*, 13 August 2009, p. 3.

229 Ms Philippa Hall, Director, Pay and Employment Equity Unit, Department of Labour, New Zealand, *Transcript of Evidence*, 13 August 2009, p. 4.

instead, provide capacity to make claims for equal remuneration through the wage fixing and award variation principles of their respective industrial tribunals (NSW, WA, TAS and SA). Queensland is the only state to expressly provide for the Queensland Industrial Relations Commission (QIRC) to make equal remuneration orders.²³⁰

- 5.220 The *Fair Work Act* is intended to cover the field in respect of 'national system employees', and excludes state industrial laws from applying to this class of people.²³¹ The principle of pay equity is recognised indirectly as an object of the Act, as part of the award modernisation objective, and an objective of minimum wage setting and is supplemented by equal remuneration orders (discussed above).
- 5.221 A more systematic and nationally consistent approach could be achieved through the adoption of uniform laws in each state and territory or a complementary scheme that guarantees the same level of protection for all employees. This could be achieved through bringing pay equity protections in the federal and state industrial relations systems and anti-discrimination laws into alignment and strengthening pay equity in the mainstream of the industrial relations system. It might also be achieved through separate national pay equity legislation that introduces a range of additional measures.
- 5.222 Before turning to various models for achieving a national coverage, it is important to understand the role of international law in providing constitutional authority for equal remuneration legislation.

Australian federation - National pay equity law

Uniform or complementary

- 5.223 In practice, to achieve nationally consistent pay equity protection the Commonwealth will need to negotiate through COAG a reference of power or an agreed legislative scheme. There are three common legislative frameworks:

230 The *Fair Work Act* expressly excludes State and Territory courts and tribunals established under State and Territory laws, with powers to make an equal remuneration order from doing so for employees covered by the *Fair Work Act 2009* (para. 26(2) (d)).

231 As a general principle of constitutional law, where the Commonwealth successfully covers the field the states and territories are precluded from legislating in respect of the same subject matter and a State or Territory become inoperable; Note also that the *Fair Work Act 2009*, applies to a 'national system employee', being an individual *usually employed* by a national system employer. The term 'usually employed' has been judicially considered to include casual or day hire employees but not a person on a vocational placement (EM p. 11).

- uniform laws;
- complementary laws; and
- state references.

Uniform laws

- 5.224 It is open to federal, state and territory governments to agree to pass identical laws to ensure uniformity (equal protection of the law) for all Australian workers. Uniform laws multi-jurisdictional schemes must, of course, be passed through multiple parliaments and assemblies and may vary to some extent.
- 5.225 The *Trade Practices Act 1974* and *Therapeutic Goods Act 1989* are Commonwealth laws directed at 'constitutional corporations' (as is the *Fair Work Act*) and state and territory laws cover natural persons and unincorporated bodies. Robert Cornall has commented that '...experience shows achieving uniformity through such arrangements is often difficult and maintaining it is even harder'.²³² A shortcoming of this approach is the difficulty in maintaining uniformity over time as the jurisdictions pass amendments. In this situation:
- a Federal Pay Equity Law passed by the Commonwealth and applied to 'national system employees' could be supplemented by identical state laws. The experience of Queensland provide some basis to negotiate an optimum model.
 - The States could also pass equal remuneration provisions identical to the Federal *Fair Work Act 2009*, to ensure uniform protection through the industrial relations systems. The *Fair Work Act* could be strengthened and then replicated.
 - Gaps and inconsistencies between jurisdictions in anti-discrimination laws could also be remedied this way (e.g. discrimination on the grounds of family responsibilities).

Complementary laws

Applied law regime

- 5.226 A complementary system involves the combination of Commonwealth, State and Territory laws to support functions of a single regulatory agency. This approach involves the application in participating jurisdictions of the law of the lead jurisdiction, or, the distribution of elements of the scheme between the Commonwealth and the States.

232 Robert Cornall, former Secretary, Attorney General's Department, *Federal Relations: The Legal and Constitutional Framework*, Public Administration Today, July – Sept 2007, p. 8.

- 5.227 The best known example is the Corporations Law Scheme, which consists of a Commonwealth Act enacted for the ACT and with each State and Territory then applying the law in force in the ACT.²³³ The Corporations' Law operates as a national law even though it is enacted separately in each jurisdiction and has the benefit of being capable of amendment by the Commonwealth in the ACT. The national law is administered by a national agency supported by laws applied in each jurisdiction and related functions were referred to the Commonwealth Director of Public Prosecutions and Australian Federal Police.
- 5.228 This composite approach is supported by a COAG Agreement that requires consultation and agreement on amendments, but, as noted above, once agreement is achieved the Commonwealth Parliament can effectively amend the entire national system because of its application via the ACT.

Recommendation 17

That the Australian Government place on the COAG agenda the consideration of the introduction of complementary legislation in relation to all equal remuneration matters dealt with by Fair Work Australia in each jurisdiction.

Other complementary schemes

- 5.229 Other complementary schemes (not involving applied laws) involve the Commonwealth assuming responsibility for decision making and States and Territories for control and enforcement (e.g. food standards, film classifications).
- 5.230 Federal regulator is given statutory powers based on the patchwork of constitutional powers with additional complementary powers, with respect to state matters, conferred by State laws (e.g. Australian Crime Commission). A national Pay Equity Act applied in the ACT and applied in each State would provide a truly national pay equity law. This would need to be underpinned by a COAG Agreement. It could support a centralised national Pay Equity Unit.

233 This approach relies on s.122 Territories Power and agreement among the States and Territories to apply the law in their own jurisdiction.

- 5.231 This raises the issues of the capacity for a national pay equity model to operate in the context of the Federal industrial relations system that is limited to national system employees. However, there has been some progress in recent weeks with some States considering the referral of powers to the Federal jurisdiction.

Referral of state powers

- 5.232 Under the Federal Constitution, Territories are subordinate to the Commonwealth Parliament with authority to pass laws for them subject to few restrictions (s.122). However, States, as independent constituent elements of the Federation, must refer legislative power if the Commonwealth lacks legislative power under s.51. Victoria and South Australia have referred legislative power on industrial relation.
- 5.233 Referral of power would enable the Commonwealth to legislate pay equity, however, it seems unlikely that any State would refer legislative power on pay equity in the absence of a referral for industrial relations more generally. Especially if this risks creating a conflict of laws in the industrial relations arena.
- 5.234 One option is a specific legislative referral, namely, a referral based exclusively on the provisions of a particular federal law, which is then given effect through State parliaments. The 2002 referral of counter terrorism offences is an example where States referred, but only to the extent of the specific provisions. This means the Commonwealth cannot amend the legislation without agreement by the States.
- 5.235 At the State level pay equity principles tend to be implemented via the mainstream industrial instruments such as awards and wage fixing although Queensland has specific equal remuneration orders. The development of Equal Remuneration Principles (ERP), which require neither proof of gender discrimination nor comparisons within and between occupations and industries, is said to have enabled the Commissions in NSW and Queensland to assess under-valuation of work on a gender basis.²³⁴
- 5.236 It is unclear how equal remuneration can be pursued in each type of employment contract (collective agreements, award and over award payments), a situation that could be rectified by amending section 582 of the *Fair Work Act 2009* so as to require the President to give detailed direction on how equal remuneration applications are to be handled.

234 Whitehouse G and T Rooney (2008) The Queensland Dental Assistants' Equal Remuneration Case: Advancing Gender Pay Equity at State Level?, *Labour and Industry* 18(2): 85-104.

Recommendation 18

That section 582 of *Fair Work Act 2009* be amended to require the President of Fair Work Australia to state explicitly the appropriate equal remuneration principle and to give detailed direction on how equal remuneration is to be handled.

Anti-discrimination legislation

Intersection of anti-discrimination law and industrial relations: *Fair Work Act 2009*

- 6.1 It is an objective of the *Fair Work Act 2009* to prevent discrimination in the workplace (s. 3).
- 6.2 The *Fair Work Act 2009* excludes state industrial relations law (to the extent that it applies to 'national system employees') but preserves the operation of state and territory anti-discrimination law that otherwise apply to 'national system employees' (s. 27). These provisions make it clear that in respect of discrimination matters a person has a choice of pursuing a claim under the discrimination provisions of the *Fair Work Act 2009*, or under anti-discrimination laws at the Commonwealth, State or Territory level.
- 6.3 Notwithstanding federal and state regimes of anti-discrimination legislation, instances of workplace discrimination based on sex, pregnancy, potential pregnancy and family responsibilities remain the subject of complaints to the Australian Human Rights Commission. Kingsford Legal Centre advised that they see:

... a number of women on issues related to sex discrimination, including discrimination relating to pregnancy, maternity leave, and sexual harassment in the work place. There are clearly trends, recurring problems, and repeat perpetrators ... the presence of clear laws making it unlawful to discriminate and/or to terminate employees on discriminatory grounds has failed to bring about a change in behaviour in workplaces both large and small.¹

1 Kingsford Legal Centre, *Submission No. 142*, p. 2.

6.4 The Association of Professional Engineers, Scientists and Managers Australia referred to a form of discrimination which is less easily identified. For instance, when asked about factors affecting career advancement:

...most people ... would in fact be referring to direct discrimination, and what we also have is indirect or systemic discrimination. The gender pay gap by its very nature in many ways is a form of systemic discrimination, which is much broader and a much larger issue. It is very different to direct discrimination.²

6.5 Indirect discrimination can occur when a person imposes a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons with family responsibilities. The Equal Opportunity Commission of Western Australia reported that indirect discrimination against women was continuing and persistent and the types of complaints included payment of wages, promotional opportunities, access to part time work and issues relating to family status.³

6.6 Equal Employment Opportunity Network of Australasia suggested that anti-discrimination law was limited in its ability to combat indirect discrimination:

Discrimination law, at best, achieves minimum compliance, rather than active involvement and proactive initiatives.⁴

6.7 Notwithstanding the introduction of the *Sex Discrimination Act 1984*, the comments above clearly indicate that there is a great deal still to be done. This Chapter will outline the legislative grounds for discrimination claims as they now stand, briefly observe relevant changes recommended by the Senate Legal and Constitutional Affairs Committee in its recent review of the Act and propose additional changes that the Committee believes are needed to address Australia's gender pay gap.

2 Ms Karinda Flavell, National Research Officer, Association of Professional Engineers, Scientists and Managers Australia, *Transcript of Evidence*, 2 April 2009, p. 50.

3 Equal Opportunity Commission of Western Australia, *Submission No. 131*, p. 3.

4 Equal Employment Opportunity Network of Australasia, *Submission No. 85*, p. 5.

Grounds of discrimination claims

6.8 The following section outlines the current sex discrimination requirements that work within the federal industrial relations system and the mechanisms available to redress discrimination claims.

Sex Discrimination Act 1984 Part II Division 1 (Discrimination in work)

6.9 The *Sex Discrimination Act 1984* provides a statutory definition of sex discrimination in work:

14 Discrimination in employment or in superannuation

- (1) It is unlawful for an employer to discriminate against a person on the ground of the person's sex, marital status, pregnancy or potential pregnancy:
 - (a) in the arrangements made for the purpose of determining who should be offered employment;
 - (b) in determining who should be offered employment; or
 - (c) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of the employee's sex, marital status, pregnancy or potential pregnancy:
 - (a) in the terms or conditions of employment that the employer affords the employee;
 - (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;
 - (c) by dismissing the employee; or
 - (d) by subjecting the employee to any other detriment.
- (3) Nothing in paragraph (1)(a) or (b) renders it unlawful for a person to discriminate against another person, on the ground of the other person's sex, in connection with employment to perform domestic duties on the premises on which the first-mentioned person resides.
- (3A) It is unlawful for an employer to discriminate against an employee on the ground of the employee's family responsibilities by dismissing the employee.

Awards and agreements must not contain terms that are discriminatory

6.10 The *Fair Work Act 2009* specifies that a modern award must not include terms that discriminate against an employee because of, or for reasons including, the employee's, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin (s 153(1)). Parties engaged in collective bargaining for an enterprise agreement cannot agree to unlawful terms, which include, among other things, a discriminatory term. For the purposes of an

enterprise agreement, the meaning of discriminatory term is the same as s 153(1) above, (s 195 (1)).

- 6.11 S. 195 is a standard formulation of the rule of non-discrimination and it is unlikely that it will be interpreted expansively so as to require the terms of an enterprise agreement to implement the right to pay equity

Referral to Australian Industrial Relations Commission

- 6.12 Under the *Australian Human Rights Commission Act 1986* an individual, representative or class action may be initiated alleging discrimination under an industrial instrument (s 46PW(1) (a) (d)).⁵ The President of the Australian Human Rights Commission must refer the complaint to the Australian Industrial Relations Commission, where 'it appears' the act would otherwise be unlawful under the Part II of the *Sex Discrimination Act 1984* (s 46W AHRC Act 1986) and is otherwise admissible (i.e. not vexatious, frivolous, misconceived or lacking in substance) (s 46PW (3)). The power to refer is triggered even though the act is done in compliance with an industrial instrument. In the case of indirect discrimination the case is also to be referred even where the indirect discrimination appears to be 'reasonable'.⁶

Modern awards and enterprise agreements

- 6.13 The *Fair Work Act* requires that Fair Work Australia must review a modern award or an enterprise agreement if the award or agreement is referred to it under section 46PW of the *Australian Human Rights Commission Act 1986* (s.161(1) s.218(1)). If an award or agreement is referred:
- The Sex Discrimination Commissioner is entitled to make submissions to Fair Work Australia for consideration in the review of an award or an agreement (s 161(2) and s 218(2))
 - If Fair Work Australia considers that the modern award or the enterprise agreement reviewed requires a person to do an act that would be unlawful under Part II of the *Sex Discrimination Act 1984* (but for the fact that the act would be done in direct compliance with the modern award), Fair Work Australia must make a determination varying the modern award or the agreement so that it no longer requires the person to do an act that would be so unlawful (s 161 (3) and s 218(4)).

5 A trade union may act on behalf of one or more of its member or class of its members aggrieved by the act (46PW(1)(d)).

6 S.7B (1) (2) *Sex Discrimination Act 1984* (Commonwealth) makes lawful otherwise unlawful indirect discrimination if the requirement or practice is 'reasonable in all the circumstances'.

Equal remuneration orders

- 6.14 The specific equal remuneration jurisdiction of Fair Work Australia may be invoked by an individual employee, a trade union or the Sex Discrimination Commissioner (s.302 (3)). Fair Work Australia may only make an equal remuneration order if it determines that the employee(s) does not enjoy equal remuneration for work of equal or comparable value. This provision replicates the provision under the *Workplace Relations Act 1996*. The Sex Discrimination Commissioner has never initiated an Equal Remuneration Order under the *Workplace Relations Act 1996*, largely due to a lack of resources.⁷

Family and carer responsibilities

- 6.15 At the federal level, the *Sex Discrimination Act 1984* and the *Disability Discrimination Act 1992* provide some protections for workers with families and carer responsibilities. The *Disability Discrimination Act 1992* provides protection for workers with a disability and workers who are “associates” (*inter alia* a carer) of people with a disability. The states and territories also have legislation that prohibits discrimination on the grounds of sex, parental status and family and carer responsibilities.
- 6.16 Under part II, division 1, section 14 of the *Sex Discrimination Act 1984* makes it unlawful to discriminate on the grounds of sex, marital status, pregnancy, potential pregnancy, or to harass another person, in any areas of public life such as employment and education.
- It is unlawful for an employer to discriminate against an employee on the ground of the employee’s family responsibilities by dismissing the employee.
- 6.17 The Act provides only limited protection against discrimination on the grounds of family responsibilities. Questions have been raised as to whether the Act would even protect an employee against ‘constructive dismissal’ where an employee is not formally dismissed but the employer’s actions give the employee no choice but to leave their employment.
- 6.18 For instance, it has been found that the provisions of the *Sex Discrimination Act*:
- Only apply to discrimination that results in dismissal from employment;

7 Commissioner Elizabeth Broderick, Sex Discrimination Commissioner, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, p. 2. See also Australian Human Rights Commission, *Submission No. 108*.

- Are limited to direct discrimination, leaving no protection against 'indirect' discrimination;
- Only apply to employment; and
- May not protect all caring relationships.⁸

6.19 Work and Family Policy Roundtable suggested that the *Sex Discrimination Act* be amended to:

- extend the protection under the Act against discrimination on the grounds of family responsibilities to indirect discrimination and to all stages of employment, not merely dismissal;
- provide enforceable standards in relation to all forms of pregnancy related discrimination; and
- provide a fast tracked resolution of complaints that involve dismissal.⁹

Proposed legislative changes

6.20 The Queensland Industrial Relations Commission concluded 'that the legislative intention and scheme of the *Anti Discrimination Act 1991 (Qld)* establishes a complaints based model which is not well suited for securing equal remuneration for work of comparable value.¹⁰ The principles apply to the federal system where discrimination complaints can be time consuming, damaging and expensive with a substantial burden on the *individual complainant* to collect the necessary evidence.¹¹ Usually, remedies relate to past harms. Conciliation provides a lower cost model but if this approach does not provide a solution, then the complainant must take the matter to the Federal Magistrates Court or the Federal Court which are more costly options.¹² Further, it has been suggested that while the complaints process can provide a remedy for individuals, it can 'fail to promote systemic change' but may assist in establishing legal precedents which promote flexible work practices.¹³

6.21 The Queensland Discrimination Commissioner commented that:

8 Human Rights and Equal Opportunity Commission, 2007 *It's About Time Women, men, work and family Final Paper 2007*, p. 54.

9 Work and Family Policy Roundtable, *Submission No. 143*, p. 20.

10 Queensland Industrial Relations Commission, 2007, *Pay Equity TIME TO ACT*, Inquiry to examine the impact of the federal Government's WorkChoices amendments to the *Workplace Relations Act 1996* on pay equity in Queensland, p. 4. See also comments by The National Pay Equity Coalition and the Women's Electoral Lobby Australia Inc, *Submission No. 118*, p. 31.

11 For example see ACT Council of Social Services, *Submission No. 54*, p. 7.

12 Commissioner Elizabeth Broderick, Sex Discrimination Commissioner, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, p. 9.

13 Human Rights and Equal Opportunity Commission, 2007 *It's About Time Women, men, work and family Final Paper 2007*, p. 56.

A complaints based process is not an effective approach to deal with pay equity. The constraints ... prevent the application of a remedy to a third party or on a collective basis workplace legislation can only go so far, when in fact the causes of pay inequity go beyond industrial concerns and encompass those broader social issues.¹⁴

6.22 In a similar vein, the Victorian Government is reviewing the Victorian *Equal Opportunity Act 1995*. The inquiry working party:

... supported the development of broader measures such as representative complaints, non-complaint based investigations and other proactive measures being available under the Victorian *Equal Opportunity Act 1995* to address pay equity issues. Consequently, the Victorian government has undertaken a review of the EO Act. The options paper to that review set out five key issues for reform, including ways to restructure the framework of the EO Act so it could better address systemic discrimination. Pay inequity is one example of such discrimination, where there is a need to remove barriers and to achieve equal opportunity.¹⁵

6.23 Consideration was being given to 'whether the Victorian Human Rights and Equal Opportunity Commission should be given powers to launch its own investigations and to enter into enforceable undertakings and issue compliance notices rather than relying on individuals to pursue a complaint'.¹⁶

6.24 On these grounds it has been argued that:

Current federal anti-discrimination law provides insufficient protection for men and women workers with family and carer responsibilities, and a limited platform to support and promote systemic change.¹⁷

6.25 Thus, there is a 'need for additional legislative provisions to assist workers to balance their paid work with their family care responsibilities in relation to paid leave, the right to request flexible work arrangements and

14 Ms Susan Booth, Commissioner, Anti-Discrimination Commission Queensland, *Transcript of Evidence*, 31 March 2009, p. 74.

15 Ms Sarah Tuberville, Officer, Department of Innovation, Industry and Regional Development, Victoria, *Transcript of Evidence*, 2 April 2009, p. 8.

16 Ms Sarah Tuberville, Officer, Department of Innovation, Industry and Regional Development, Victoria, *Transcript of Evidence*, 2 April 2009, p. 8.

17 Human Rights and Equal Opportunity Commission, 2007 *It's About Time; Women, men, work and family Final Paper 2007*, p. 57.

carer's leave.¹⁸ Specifically, new legislation is required to expand family responsibilities protection for both men and women.¹⁹ These matters have been discussed previously in relation to the National Employment Standards.

- 6.26 The City of Perth saw the effectiveness of the anti-discrimination legislation in relation to fair access to training and promotion as dependent on the definition of 'operational reasons'.²⁰ The Council called for clear definitions of what are "reasonable operational reasons" for employers to grant or refuse flexible work arrangements.²¹

Remedies under federal *Sex Discrimination Act 1984*

- 6.27 It has been suggested that the *Sex Discrimination Act 1984* be amended in relation to:

- broadening discrimination on the ground of family responsibilities;
- include positive obligation on employer to make reasonable accommodation for pregnancy and family/carer responsibilities;
- grant the Commissioner powers to initiate own motion inquiries;
- confer power for Commissioner to certify special measures; and
- expand provisions for *amicus curiae* (friend of the court) briefs and other interventions (as a right) in court proceedings.²²

Senate inquiry into the effectiveness of the *Sex Discrimination Act 1984*

- 6.28 In 2008, the Senate Legal and Constitutional Affairs Committee undertook an inquiry into the effectiveness of the *Sex Discrimination Act 1984*. The report entitled the *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* was tabled on 12 December 2008. The report made a number of recommendations relevant to this inquiry.

18 Human Rights and Equal Opportunity Commission, 2007 *It's About Time Women, men, work and family Final Paper 2007*, p. 82.

19 Human Rights and Equal Opportunity Commission, 2007 *It's About Time Women, men, work and family Final Paper 2007*, pp. xi - xii

20 City of Perth, *Submission No. 31*, p. 1.

21 City of Perth, *Submission No. 31*, p. 1.

22 Australian Human Rights Commission, *Submission No. 108*, pp. 16-21.

- 6.29 In relation to the commitment to the elimination of sex discrimination and sexual harassment **Recommendation 1** states that:

The committee recommends that the preamble to the Act and subsections 3(b), (b) and (c) of the Act be amended by deleting the phrase 'so far as is possible'.

- 6.30 In relation to the objects of the Act that currently give effect to CEDAW and do not refer to other conventions such as the ICCPR, ICESCR or the ILO. The Senate Committee considered that the objects of the Act should explicitly refer to these other international conventions which create obligations in relation to gender equality and **Recommendation 2** states that:

The committee recommends that subsection 3(a) of the Act be amended to refer to other international conventions Australia has ratified which create obligations in relation to gender equality.

- 6.31 In relation to an 'express requirement under the Act for the courts to interpret the provisions of the Act consistently with the international conventions it seeks to implement', **Recommendation 3** states that:

The committee recommends that the Act be amended by inserting an express requirement that the Act be interpreted in accordance with relevant international conventions Australia has ratified including CEDAW, ICCPR, ICESCR and the ILO conventions which create obligations in relation to gender equality.

- 6.32 **Recommendation 5** states that:

The committee recommends that the definitions of direct discrimination in sections 5 to 7A of the Act be amended to remove the requirement for a comparator and replace this with a test of unfavourable treatment similar to that in paragraph 8(1)(a) of the *Discrimination Act 1991 (ACT)*.

- 6.33 **Recommendation 6** states that:

The committee recommends that section 7B of the Act be amended to replace the reasonableness test in relation to indirect discrimination with a test requiring that the imposition of the condition, requirement or practice be legitimate and proportionate.

6.34 **Recommendation 12** states that:

The committee recommends that the Act be amended to make breastfeeding a specific ground of discrimination.

6.35 In relation to family responsibilities, the Senate Committee found 'Evidence to the committee overwhelmingly supported the view that the protection against discrimination on the basis of family responsibilities under the Act is too limited and **Recommendation 13** states that:

The committee recommends that the prohibition on discrimination on the grounds of family responsibilities under the Act be broadened to include indirect discrimination and discrimination in all areas of employment.

6.36 Further, the Senate Committee supported 'providing for a positive duty on employers not to unreasonably refuse requests for flexible working arrangements to accommodate family or carer responsibilities' and **Recommendation 14** states that:

The committee recommends that the Act be amended to impose a positive duty on employers to reasonably accommodate requests by employees for flexible working arrangements, to accommodate family or carer responsibilities, modelled on section 14A of the *Equal Opportunity Act 1995 (VIC)*.

6.37 **Recommendation 33** states that:

The committee recommends that the Act be amended to require the Sex Discrimination Commissioner to monitor progress towards eliminating sex discrimination and achieving gender equality, and to report to Parliament every four years.

6.38 The Senate Committee's recommendations are currently being considered by the Government.

Own motion inquiries

6.39 Australian Human Rights Commission (AHRC) suggested the Sex Discrimination Commissioner be given authority to conduct own motion inquiries into systemic forms of discrimination. The Commissioner does have some investigative powers in respect to the acts and practices of Commonwealth programs but discrimination issues that occur in business

rely on individual complaints.²³ The Commission has produced guidelines for businesses and conducted relevant workshops.²⁴

- 6.40 The AHRC suggested that the *Sex Discrimination Act 1984* be amended to include functions to enable :
- the Sex Discrimination Commissioner to commence self initiated complaints for alleged breaches of the Sex Discrimination Act, without requiring individual complaint. The new function would include the ability to enter negotiations, reach settlements, agree enforceable undertakings, and issue compliance notices.
 - The Australian Human Rights Commission to commence legal action in the Federal Magistrates Court or Federal Court for a breach of the Sex Discrimination Act.²⁵
- 6.41 Support for enhancing the Sex Discrimination Commissioner's powers to conduct own motion inquiries can be found in international arrangements. The United Kingdom's Commission for Equality and Human Rights has the power to 'investigate whether an unlawful act of discrimination or harassment has occurred and need only suspect that an unlawful act has taken place'.²⁶
- 6.42 The Canadian Human Rights Commission can initiate a complaint if 'it has reasonable grounds for believing a discriminatory practice has occurred'.²⁷
- 6.43 The New Zealand Human Rights Commission 'may inquire into any matter including any law, practice or procedure (governmental or non-governmental) where it thinks human rights might be, or have been, infringed'.²⁸
- 6.44 In relation to the powers of AHRC and the Sex Discrimination Commissioner, the Senate Committee concluded that there are 'deficiencies in the existing powers ... to enforce the obligations created by the Act' and made several recommendations:

23 Commissioner Elizabeth Broderick, Sex Discrimination Commissioner, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, pp. 6-7.

24 Dr Cassandra Goldie, Director, Sex Discrimination Unit, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, p. 7.

25 Australian Human Rights Commission, *Submission No. 108*, p. 21.

26 Australian Human Rights Commission, Submission to the Senate Legal and Constitutional Affairs Committee inquiry into Effectiveness of the *Sex Discrimination Act 1984* citing the *Equality Act 2006* (United Kingdom), s 20(1)(a) and), s 20(2)

27 *Canadian Human Rights Act RS 1985*, cH-6, s 40(3)

28 *Human Rights Act 1993*, New Zealand, s 5(2)(h)

Recommendation 29

The committee recommends that the Act and the HREOC Act should be amended to expand HREOC's powers to conduct formal inquiries into issues relevant to eliminating sex discrimination and promoting gender equality and, in particular, to permit inquiries which examine matters within a state or under state laws.

Recommendation 30

The committee recommends that paragraph 48(1)(gb) of the Act be amended to explicitly confer a function on HREOC of intervening in proceedings relating to family responsibilities discrimination or victimisation.

Recommendation 31

The committee recommends that subsection 46PV(1) of the HREOC Act be amended to include a function for the special purpose commissioners to appear as *amicus curiae* in appeals from discrimination decisions made by the Federal Court and the Federal Magistrates Court.

Recommendation 32

The committee recommends that paragraph 48(1)(gb) of the Act and subsection 46PV(2) of the HREOC Act be amended to empower HREOC to intervene in proceedings, and the special purpose commissioners to act as *amicus curiae*, as of right.

- 6.45 The Sex Discrimination Commissioner has standing to make submissions in a review of an award (s. 161(2) FWA) in a variation of an enterprise agreements (s.218 (2) FWA) referred by the President of AHRC (s. 46PW SDA). The Commissioner also has standing to make an application for an equal remuneration order (s.302 (3)(f) FWA).
- 6.46 Where the Commissioner receives a complaint and, but for the term of the award or the agreement, the term is *prima facie* unlawful under the SDA, the President of HREOC must refer the matter to Fair Work Australia (s. 46PW SDA).

- 6.47 Fair Work Australia must ensure that awards and agreements comply with the SDA and the Sex Discrimination Commissioner has a role in bringing expertise on discrimination and the status of women before the Fair Work Australia. Fair Work Australia does not have the power to initiate an investigation but must respond to applications for award creation or variation, certification of enterprise agreements and research to inform the annual national wage case or an application for an equal remuneration order.
- 6.48 The *Sex Discrimination Act* requires amendment to grant the Sex Discrimination Commissioner the power to conduct an own motion inquiry into systemic inequality in the workplace. Further discussion is needed to determine the scope of inquiry function, related powers that would be necessary and the appropriate reporting mechanism. Unlike the Indigenous Social Justice Commissioner, the Sex Discrimination Commissioner cannot initiate an investigation in to systemic indirect discrimination even though a pattern of systemic discrimination is evidenced through multiple complaints.
- 6.49 An own motion inquiry function would enable the Commissioner to investigate systemic discrimination recognising that the concept of equality is 'substantive' equality and that systemically entrenched discrimination requires more proactive investigative and inquisitorial approach. The current anti-discrimination model puts the burden of responsibility onto aggrieved parties to lodge a complaint. It is well recognised that those who are most vulnerable to exploitation and discrimination are generally less able to access complaints mechanisms. It appear to be appropriate that this function remain outside Fair Work Australia given the relevant expertise and access to information of the Australian Human Right Commission.
- 6.50 The Senate Committee made the following further recommendations in relation to enhanced powers of the Sex Discrimination Commissioner:
- 6.51 **Recommendation 37**
- The committee recommends that further consideration be given to amending the Act to give the Sex Discrimination Commissioner the power to investigate alleged breaches of the Act, without requiring an individual complaint.
- 6.52 **Recommendation 38**
- The committee recommends that further consideration be given to amending the Act to give HREOC the power to commence legal

action in the Federal Magistrates Court or Federal Court for a breach of the Act.

- 6.53 The capacity of the Commission to conduct own motion inquiries depends on resources. However, that should not determine the fundamental issue of good quality institutional design. The Commissioner may choose to set priorities and allocate funds according to those priorities. It is not envisaged that the Commissioner would be routinely engaged in own motion inquiries into pay equity. However, a strategically planned approach may yield positive results and contribute both to the expertise and knowledge of Fair Work Australia, unions and employers and to Government policy.

Recommendation 19

That the *Sex Discrimination Act 1984* be amended to enable the Sex Discrimination Commissioner to commence self initiated complaints for alleged breaches of the Sex Discrimination Act, without requiring individual complaint and including the ability to enter negotiations, reach settlements, agree enforceable undertakings and issue compliance notices.

Recommendation 20

That the *Sex Discrimination Act 1984* be amended to enable the Australian Human Rights Commission to commence legal action in the Federal Magistrates Court or Federal Court for a breach of the Sex Discrimination Act.

Educative processes

- 6.54 In addition to the above changes in relation to the powers of the Commissioner, there is a need to get the message across to the community. The Kingston Legal Centre believes that employers should know the economic and human costs of discrimination and harassment and that:

... the raft of discrimination and employment laws have so far been ineffective in bringing about change for recalcitrant

employers, there clearly needs to be more emphasis on education in the workplace.²⁹

Recommendation 21

That the *Sex Discrimination Act 1984* be amended to make it mandatory for employers who are repeat offenders discriminating on the basis of pregnancy or carer's responsibility to be required to attend counselling or an approved training course.

Committee comments

- 6.55 Discrimination legislation is a vital part of the approach to achieving pay equity. The brevity of this chapter reflects the fact that the Senate Legal and Constitutional Affairs Committee commenced an inquiry into the effectiveness of the *Sex Discrimination Act 1984* on the same day as the pay equity inquiry commenced in the House of Representatives. The Senate inquiry covered much of the ground that is relevant to this inquiry and the Government is currently considering that set of recommendations. Accordingly, this Committee has presented only a brief overview of these matters. The Committee does, however, strongly urge the Government to give due consideration to the issues relating to the *Sex Discrimination Act 1984* raised by both committees.
- 6.56 The Committee has emphasised the importance of investigative powers for the Sex Discrimination Commissioner. The systemic nature of the gender pay gap can be attributed to indirect discrimination which is not easily addressed in a system reliant on individual complaints. In addition to the direct discrimination discussed above, the gender pay gap also reflects the undervaluation of the work that women traditionally do and a broader approach is needed to address these.

²⁹ Kingsford Legal Centre, *Submission No. 142*, p. 6.

Pay Equity Unit

- 7.1 A number of submissions to the inquiry support the establishment of a separate office to take a holistic approach to the policy and legislative frameworks needed to achieve pay equity. This could be achieved through the introduction of a stand-alone pay equity act or through amendments to the existing *Fair Work Act 2009*. Whether the amendments are to the *Fair Work Act* or a separate piece of legislation, the legislative requirements should include:
- positive obligations on private and public sector employers to recognise and give effect to the right to equal remuneration;
 - the conduct of public and private sector pay equity audits;
 - development of pay equity plans;
 - annual reporting requirements for public sector agencies; and
 - reporting by public and private sector employers.
- 7.2 The rationale behind enacting separate pay equity legislation is that experience shows that womens' right to equal remuneration has not been realised through the mainstream industrial relations system, which is steeped in gender assumptions and the historical under-valuation of work.
- 7.3 A comprehensive approach, and one adopted by most European states, recognises equal remuneration measures need to be supported by separate legislation. A stand-alone Act sends a clear political signal of the priority given to pay equity by government and clearly specifies measures intended to help drive deeper systemic change. Stand-alone legislation has an educative value in being identified as a high profile public issue.¹

¹ Dr Cassandra Goldie, Director, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, p. 17.

Women into Politics saw pay equity legislation as a 'necessary preliminary' to education as attitudinal change will follow legislative change.²

- 7.4 A Pay Equity Act is a vehicle for supplementing mainstream industrial relations system, focusing the attention of employers, and, generating knowledge, expertise and strategies for eliminating systemic inequity in the workplace. The Australian Human Rights Commission added that separate legislation would also clarify the roles and responsibilities and address existing lack of co-ordination across the whole of government.³
- 7.5 A Pay Equity Act needs to express clear simple positive obligations on employers to respect and implement womens' right to equal remuneration; explain what pay equity means and provide the tool to conduct pay equity audits. It needs to provide a framework for developing a pay equity plan and clear reporting obligations. The purpose of reporting should be articulated so that investment in analysis and reporting is part of a constructive dialogue.
- 7.6 Employers equal opportunity for women in the workplace programs should be designed to ensure that:
- appropriate action is taken to eliminate all forms of discrimination by the relevant employer against women in relation to employment matters; and
 - measures are taken by the relevant employer to contribute to the achievement of equal opportunity for women in relation to employment matters.

In addition to the obligations on corporations, requirements imposed under the act should also apply to unions and non-government organisations, such as charitable bodies. Many not for profit organisations carry out public functions financed through government grants and should be included so as to ensure transparent open and public feedback to federal policy and law makers on the achievement of pay equity for traditionally low paid and female dominated occupations.

2 Ms Joan Bielski, Women into Politics, *Transcript of Evidence*, 1 April 2009, pp. 21, 24.

3 Dr Cassandra Goldie, Director, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, pp. 17-18.

Specialist Pay Equity Unit

7.7 A Pay Equity Act should establish a specialist Pay Equity Unit within Fair Work Australia. Fair Work Australia was described as a ‘one-stop-shop’ for practical information, advice and assistance, to settle grievances and ensure compliance with the workplace laws.⁴

Where you put it – which organisation it is linked to – is incredibly important. If it is sent off in Sydney and it is a small unit and it is linked to FaHCSIA, it does not have the standing that it would do if it were placed in one of the central agencies sitting in Canberra. That is purely and utterly about how things are perceived.⁵

7.8 The Australian Education Union saw the role of a separate division within Fair Work Australia as:

... to gather data, publicise best practice, and issue regular updates on the achievement of equal remuneration for employees covered by the federal system of awards and agreements. The Division would be able to be called upon by the Commission in order to assist in any review undertaken so as to give effect to the Object of the Act dealing with equal remuneration.⁶

7.9 The principal objects of the legislation should establish a unit to:

- promote the principle that employment for women should be dealt with on the basis of merit;
- promote, amongst employers, the elimination of discrimination against, and the provision of equal opportunity for, women in relation to employment matters; and
- foster workplace consultation between employers and employees on issues concerning equal opportunity for women in relation to relevant employment matters.

7.10 The role and functions of the unit would include but not limited to:

- communicating information to the public about the pay equity act to promote understanding and acceptance, and public discussion, of equal opportunity for women in the workplace;

4 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 15.

5 Ms Jenness Gardner, Manager, Pay Equity Unit, Department of Commerce, Western Australian Government, *Transcript of Evidence*, 26 February 2009, p. 12.

6 Australian Education Union, *Submission No. 76*, p. 16.

- developing tools for the assistance of employers and pay equity committees in developing pay equity plans or otherwise achieving pay equity;
- assisting in the training of employer's pay equity committees;
- providing reports and advice to government about the progress of this legislative policy;
- providing advice and assistance to employers in the development and implementation of workplace programs;
- issuing guidelines to assist relevant employers to achieve the purposes of this Act;
- monitoring the lodging of reports by relevant employers as required by this Act and to review those reports and deal with them in accordance with this Act;
- monitoring and evaluating the effectiveness of workplace programs in achieving the purposes of this Act;
- undertaking research and studies on relevant issues, educational programs and other programs for the purpose of promoting equal opportunity for women in the workplace;⁷
- conducting impartial investigations of disputes and complaints;
- reviewing the effectiveness of this Act in achieving its purposes; and
- reporting to the Minister on such matters in relation to equal opportunity for women in the workplace as the Agency thinks fit.

7.11 The new unit would include the functions of the current Equal Opportunity for Women Agency, however, there would be a number of significant differences. The Pay Equity Unit would comprise three major functions in enforcement research and education.

⁷ See discussion on Quebec and the Pay Equity Commission in DEEWR, *Submission No. 58*, p. 31.

Fair Work Australia



Deputy President



Pay Equity Unit



Enforcement	Research	Education and Promotion
<p>Biennial reporting (plans, audits, actions)</p> <p>Investigate disputes/complaints</p> <p>Job evaluation of specific occupations that are low paid</p> <p>Monitor changes in awards</p> <p>Self referral powers</p> <p>Review effectiveness of the Act</p> <p>Report to Minister/Parliament; and</p> <p>Report on matter relevant to Australia’s international obligations</p>	<p>Develop tools/programs to assist employers</p> <p>Preparation of guidelines to assist employers</p> <p>Monitor and evaluate the effectiveness of workplace programs</p> <p>Reports on wages and conditions and changes in pay equity outcomes</p> <p>Provide information and assistance to employers through the maintenance of a website and</p> <p>Collection of data</p> <p>Facilitate greater comparability of alternative data sources.</p>	<p>Provide information to the public on the legislation</p> <p>Assist in training, job evaluation processes; the development of workplace plans and programs;</p> <p>Assist in undertaking audits;</p> <p>Administering reporting obligations.</p> <p>Promotion of the pay equity principles and undertake initiatives such as the Employer of Choice for Women Awards.</p>

- 7.12 In addition to any other powers conferred on the Unit, the Unit should have the power to do all things necessary or convenient to be done for or in connection with the performance of the functions of the Unit.

Recommendation 22

That the Minister introduce an Act to establish a specialist pay equity unit within Fair Work Australia as central point for pay equity monitoring, development and application of pay equity audits, development of pay equity plans; and the provision of specialist assistance to Fair Work Australia in award modernisation

- 7.13 For the purposes of the pay equity act, the definition of 'employment for women' in the Pay Equity Act should include:
- the recruitment procedure, and selection criteria, for appointment or engagement of persons as employees;
 - the promotion, transfer and termination of employment of employees;
 - training and development for employees;
 - work organisation;
 - conditions of service of employees;
 - arrangements for dealing with sex-based harassment of women in the workplace; and
 - arrangements for dealing with pregnant, or potentially pregnant employees and employees who are breastfeeding their children.

Deputy President

- 7.14 There should be a designated Pay Equity Deputy Commissioner to oversight the functions of the Pay Equity Unit and facilitate the cooperation and coordination of the work of the unit with the other roles and function of Fair Work Australia. There needs to be an interface between the Pay Equity Unit and those members of Fair Work Australia who are modernising awards and approving agreements. This would give the Unit status within the organisation and demonstrate the Government's commitment to the principles of pay equity.

Recommendation 23

That a Deputy President be assigned responsibility for the administration, conduct and strategic output in relation to the activities of the Pay Equity Unit.

Advisory Board

7.15 An advisory board should be established to advise the Deputy President and to enable input from stakeholders. In the Scottish jurisdiction Close the Gap is an independent body funded by the Scottish Government through ministerial approval and may be an appropriate model. The steering group includes representatives from the Scottish Government, Equality and Human Rights Commission, Scottish Trades Union Congress, Highlands and Islands Enterprise and Scottish Enterprise which are the two economic development agencies that cover the whole of Scotland.⁸

7.16 Close the Gap stated:

The benefit to us in having such a broad partnership is that businesses recognise that we come from a position of being interested in productivity as well as being interested in equality and so I think it gives us some credibility with, for example, private sector organisations where we may not have had that had we only been focused on equality work per se.⁹

Recommendation 24

That the Deputy President appoint an Advisory Board comprising relevant government agencies, union, employer and employee representatives to provide input into strategic policy development.

Enforcement function

7.17 The combination of 'sticks' and 'carrots' would be the most effective approach. Fair Work Australia would have the capacity to apply the penalty regime as deemed appropriate. Union peak bodies stated that

8 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 2.

9 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 2.

‘enforced regulation is necessary to encourage, educate and assist organisations to address pay inequity and to ensure pay inequity is addressed where it is most likely to occur.’¹⁰

7.18 The Australian Education Union suggested:

... audits are useful as a diagnostic tool and to assist organisations understand dimensions and application of gender pay equity, however the compulsion to act, via principles or separate legislation allows for advances in a more systemic fashion.¹¹

7.19 Union peak bodies called for an inspectorate and compliance group empowered to investigate incidence and conduct audits.¹² The QIRC concluded that ‘voluntary approaches to pay equity are limited in their delivery of outcomes’.¹³ The Queensland Industrial Relations Commissioner argued that:

... a voluntary approach is slower than a legislative based approach in delivering real pay equity gains for women. Research has shown that in the absence of compulsory practices organisations are left to make their own judgements about what is equitable for employees and profitable for business. Further, organisations are only certain about what to do when policies are spelt out in legislation.¹⁴

7.20 In arguing for mandatory pay equity audits the ACTU took the view that to ensure cultural and workplace change follows the legislative changes, you need to measure pay equity at both the firm and national levels.¹⁵ Union peak bodies suggested:

mandatory annual reporting by all employers on basic gender pay data which is not overly onerous on employers but which is sufficient for meaningful analysis ... the second tier proposes a mechanism where in depth investigating and auditing can be

10 Australian Council of Trade Unions (ACTU) and Joint State Union Peak Councils, *Submission No. 125*, p. 38.

11 Australian Education Union, *Submission No. 76*, p. 19.

12 Australian Council of Trade Unions (ACTU) and Joint State Union Peak Councils, *Submission No. 125*, p. 38.

13 Queensland Industrial Relations Commission, 2007, *Pay Equity TIME TO ACT*, Inquiry to examine the impact of the federal Government’s WorkChoices amendments to the *Workplace Relations Act 1996* on pay equity in Queensland, p. 7.

14 Commissioner Glenys Fisher, Queensland Industrial Relations Commission, *Transcript of Evidence*, 31 March 2009, p. 4.

15 Ms Catherine Bowtell, Senior Industrial Officer, Australian Council of Trade Unions, *Transcript of Evidence*, 3 April 2009, p. 2.

instigated and enforced if mandatory reporting identifies pay inequity. Such investigations should be capable of being instigated not just by specialist pay equity agencies but women and their unions.¹⁶

7.21 The ACTU added that compulsory measurement is a remedy in itself as:

... measuring is one of the very important things ... you will not get cultural change unless there is a recognition of a problem in firms.¹⁷

7.22 In the New Zealand experience:

The review process in itself was a significant education and awareness-raising exercise for employers, unions, human resources practitioners and others. Hundreds of people have now been directly involved in review committees, and many thousands have been involved in reviews in various ways.¹⁸

7.23 The ACTU made the point that the basic reporting information would be similar to that required for the tax office and the level of information required would depend on the size of the business.¹⁹

7.24 The current 'stick' wielded by EOWA is to be named in Parliament as not complying with the legislation.²⁰ However, some firms saw this as a 'badge of honour' to be noncompliant with the current legislation.²¹ The use of corporate social responsibility in the naming and shaming approach would not be as effective as providing sanctions against firms that did not participate in required processes.²²

7.25 The Finance Sector Union of Australia found that women could not overcome barriers resulting from assumptions of work value, work organisation, hours of work and performance that were built into jobs:

16 Australian Council of Trade Unions (ACTU) and Joint State Union Peak Councils, *Submission No. 125*, p. 28.

17 Ms Catherine Bowtell, Senior Industrial Officer, Australian Council of Trade Unions, *Transcript of Evidence*, 3 April 2009, p. 3.

18 Ms Philippa Hall, Director, Pay and Employment Equity Unit, Department of Labour, New Zealand, *Transcript of Evidence*, 13 August 2009, p. 2.

19 Ms Belinda Tkalcevic, Legal Industrial Officer, Australian Council of Trade Unions, *Transcript of Evidence*, 3 April 2009, pp. 14 -15.

20 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 19.

21 Ms Mairi Steele, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 20 August 2009, p. 9.

22 Mr Rodney Masson, National Director, Finance Sector Union of Australia, *Transcript of Evidence*, 3 April 2009, p. 34.

no amount of cooperation such as that shown between NAB [National Australia Bank] and FSU at the time of the pay equity audit can overcome these issues in the long term. A plethora of regulation, monitoring and enforcement initiatives is required.²³

7.26 Hamilton James and Bruce suggested that:

... specific legislative reforms should also consider motivating and empowering structures to effectively address and monitor pay equity. In doing so, state and federal governments should make all businesses accountable for upholding the principles of equal pay stipulated in legislation through mandatory reporting, auditing and sanctions for non compliance.²⁴

7.27 Several submissions opposed mandatory reporting and consideration was given to whether there should be a voluntary approach or whether the implementation of strategies should be mandatory. Ritchies Stores Pty Limited opposed the introduction of mandatory reporting 'that have the effect of increasing administrative and compliance burdens' describing it as a 'cumbersome idea and the benefits are not clear'.²⁵

7.28 The University of Western Sydney found the audit process to be a labour intensive and time consuming process and added that:

Higher education institutions are already burdened by onerous reporting requirements and there is little evidence that mandatory reporting requirements alone have directly resulted in significant outcomes for equity target groups including women. As an example, within the NSW government sector, mandatory reporting of the representation of equity groups and the production of action plans has been required for over a decade but there is no evidence that this has increased the representation of those groups within the NSW government and quasi-government sectors.²⁶

7.29 Diversity Council Australia Ltd did not favour mandatory reporting requirements given the significant movement quite recently:

... reporting would be a burden that would take away from the task ... Clearly human resources managers have nearly as little understanding as the broader community of what pay equity

23 Ms Susan Kenna, National Industrial Officer, Finance Sector Union of Australia, *Transcript of Evidence*, 3 April 2009, p. 28.

24 Hamilton James and Bruce, *Submission No. 77*, p. 1.

25 Ritchies Stores Pty Ltd, *Submission No. 78*, p. 3.

26 University of Western Sydney, *Submission No. 86*, p. 2.

actually is ... A quick fix solution it ain't. We think the educative provisions need to be introduced in the community and, very specifically, in business ... so that one day we may move towards reporting. But history has proven that it is not a great way to get things done in the first instance. My interest and DCA's interest, from tracking this issue over a very long time, is real outcomes.²⁷

- 7.30 The Council suggested a 'non-mandatory approach to progressing pay equity, emphasising greater education and information and better data analysis and monitoring'²⁸.
- 7.31 There was also concern that private sector employers could comply notionally with out implementing any changes.²⁹
- 7.32 On the other hand, the Pay Equity Unit in Western Australia considered that there had been progress through encouragement and that while the voluntary approach could be considered the 'slow-burn solution', it was long term changes that were sought to a problem that has existed for a long time.³⁰ The WA review found that:

... having recognized the need for a combination, we would not want to understate the importance of voluntary strategies. In the field of IR, statutory processes have their limitation, and it is in the workplace where the gender pay gap will eventually be resolved. The resolution of issues impacting on the gender pay gap is dependent upon the commitment of the main industrial parties in the workplace.³¹

Monitoring pay equity

- 7.33 Under the proposed Pay Equity Act relevant employers would be required to report on the establishment and implementation of pay equity action plans including the outcomes of pay equity audits. The Act would require legally binding documentation of pay equity adjustments, the

27 Ms Nareen Young, Executive Director, Diversity Council Australia Ltd, *Transcript of Evidence*, 26 September 2008, p. 42.

28 Diversity Council Australia, *Submission No. 110*, p. 18.

29 Dr Anne Junor, *Transcript of Evidence*, 26 September 2008, p. 60.

30 Ms Jenness Gardner, Manager, Pay Equity Unit, Department of Commerce, Western Australian Government, *Transcript of Evidence*, 26 February 2009, p. 12.

31 Dr Trish Todd and Dr Joan Eveline, 2004, *Report on the review of the Gender Pay Gap in Western Australia*, p. 53 cited in Chamber of Commerce and Industry of Western Australia, *Submission No. 72*, p. 14.

implementation of adjustments to rectify pay inequity, mandatory reporting, dispute resolution and sanctions for non-compliance.³²

- 7.34 There are a number of readily available pay equity tools that employers can currently access.³³ EOWA has an online Pay Equity Tool which has been used by employers with 100 or more employees and the Western Australian Pay Equity Unit has also released a pay equity tool which can be used by smaller companies or organisations and public sector agencies. The tool is designed to make doing an audit easy:

... it is pretty simple; we have used it in a number of different organisations – to drag it, drop it and press a button and it will produce graphs, data and basically the outline of a report. We think it is very, very simple, but it is actually the major focus of what my team does. We spend a lot of time talking to people about how to use the tool, how to put your data into the right format to input it and then what those graphs mean, what sort of information that is providing you and also assisting organisations to think about what recommendations would be appropriate for them.³⁴

- 7.35 Dr Meg Smith, however, described the pay equity tool as ‘an alerting tool that does not necessarily address the issues of valuation that contribute to pay equity’ adding that it is a with-in organisation tool which presumes the capacity to implement that tool.³⁵ The compliance guidelines for EOWA reporting do not make reporting on pay data a requirement.³⁶
- 7.36 The current *Equal Opportunity for Women in the Workplace Act 1999* relates to ‘private companies and other organisations (including community organisations, non-government schools, unions, group training companies and higher education institutions) with 100 or more employees.’³⁷ However, many organisations with a predominantly female workforce fall beneath this threshold.

32 See discussion in Queensland Industrial Relations Commission, 2007, *Pay Equity TIME TO ACT*, Inquiry to examine the impact of the federal Government’s WorkChoices amendments to the *Workplace Relations Act 1996* on pay equity in Queensland, p. 8.

33 For example see Ms Suzanne Hammond, Industrial Relations Spokesperson, *Transcript of Evidence*, 14 May 2009, p. 11.

34 Ms Jenness Gardner, Manager, Pay Equity Unit, Department of Commerce, Western Australian Government, *Transcript of Evidence*, 26 February 2009, p. 5.

35 Ms Meg Smith, *Transcript of Evidence*, 26 September 2008, p. 54.

36 Equal Opportunity for Women in the Workplace Agency, *Submission No. 113*, p. 12.

37 See discussion in DEEWR, *Submission No. 58*, p. 17.

- 7.37 It is important that in monitoring pay equity, small businesses are involved because of the number of women employed in this sector. The practice in the past has been to make the resources of EOWA available to all businesses and to use mechanisms such as media and chambers of commerce to raise awareness amongst small business owners.³⁸
- 7.38 Business and Professional Women Australia commented that 'very small businesses are normally stretched to capacity' and tend to be fairer anyway. It is the processes that develop over time that become discriminatory as the business grows to 40 or 50 staff.³⁹
- 7.39 There are a number of issues to be considered in requiring employers to incorporate pay equity initiatives including:
- Resources to report, compare and analyse organisational pay equity data;
 - Privacy to pay data inhibiting employees from understanding their own pay equity;
 - Privacy of comparative data in similar industries/businesses
 - Those dealing with pay equity may not be reporting to the CEO/board;
 - In male dominated industries, pay equity may not be deemed a priority given the small number of females; and
 - The need and mechanisms for legislative reinforcement.⁴⁰
- 7.40 In relation to the provision of information to small businesses who may be losing staff because they are not competitive in the labour market, EOWA commented that:
- We provide information already. We have produced a number of what we call industry verticals, which provide benchmarking information for businesses within specific industries. We have done manufacturing – being the largest sector – education, finance, ... and we are about to do retail. That provides a workplace profile of the sector, of what business issues are facing the sector and how larger organisations are addressing these business issues through EO initiatives. That information is available to small business and they can benchmark themselves in the sector. The issues of pay equity probably are significant, certainly for the employees in small businesses, where they might not necessarily have the

38 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 25.

39 Mrs Sandra Cook, Director of Policy, Business and Professional Women Australia, *Transcript of Evidence*, 5 November 2008, p. 2.

40 Hydro Aluminium Kurri Kurri Pty Ltd, *Submission No. 36*, p. 1.

sophisticated HR systems of benchmarking and performance review practices and it is more on values, culture and behaviour and rewarding not necessarily on job value but rather just that they are a good person.⁴¹

7.41 EOWA cautioned that:

It is our experience of those smaller organisations of around 100-plus employees that they do not necessarily have the HR systems in place to collect the data or the resources available to necessarily commit to specific HR programs. Collecting, providing and reporting on some of this information would be, for smaller employers, a significant burden. But, that said, that does not mean it does not happen and that employers are not putting in place measures which remove discrimination and increase women's workforce participation ... So, whilst they are not necessarily being monitored, that does not mean that activity and action is not actually taking place.⁴²

7.42 The point was made that small businesses have to comply with Occupational Health and Safety and taxation rules and the Kingsford Legal Centre did not make a 'distinction in terms of the capacity of a business to abide by anti-discrimination laws that have been in place for a long time'.⁴³ It is envisioned that prosecution in these cases would be restricted to repeat offenders and recalcitrant employers.⁴⁴

7.43 An effective system could be developed that does not place an onerous burden on small businesses. Therefore, notwithstanding these issues, all steps should be taken to develop a reporting system as outlined below.

7.44 There is an onus on the government to lead by example and accordingly all public sector organisations should be required to undertake pay equity audits. For example, Dr Patricia Todd suggested that pay equity audits

41 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 27.

42 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 26.

43 Ms Shirley Southgate, Principal Solicitor, Kingsford Legal Centre, *Transcript of Evidence*, 1 April 2009, p. 43.

44 Ms Shirley Southgate, Principal Solicitor, Kingsford Legal Centre, *Transcript of Evidence*, 1 April 2009, p. 43.

should be mandatory for the public sector and then for organisations wishing to tender for government business.⁴⁵

Recommendation 25

That all federal public sector organisations be required to report biennially to the Pay Equity Unit within Fair Work Australia on the implementation of a diversity plan to increase pay equity.

- 7.45 Further, all public services bodies are required to produce a Gender Equality Scheme including objectives for achieving gender equality for employees and in service provision.⁴⁶ The Equal Opportunity Commissioner of Western Australia supported a 'gender duty' requirement for all public authorities.⁴⁷

Such duties exist already in the UK, the most recent being the 'gender equality duty' under the *Sex Discrimination Act 1975*, which has been in force since April 2007 ... Gender equality policy initiatives have also been formalised in Canada and a number of countries in the European Union, where it is known as 'gender mainstreaming'.⁴⁸

Recommendation 26

That all federal public sector organisations be required to report biennially to the Pay Equity Unit within Fair Work Australia on the implementation of a gender equity duty in relation to employees and in service provision.

45 Dr Patricia Todd, Senior Lecturer, Industrial Relations and Human Resources and Co-Director, Consortium for Diversity at Work, Business School, University of Western Australia, *Transcript of Evidence*, 5 November 2008, p. 60.

46 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 8.

47 Equal Opportunity Commission of Western Australia, *Submission No. 131*, p. 13.

48 Equal Opportunity Commission of Western Australia, *Submission No. 131*, pp. 13-14. *Sex Discrimination Act 1975*, as amended by the *Equality Act 2006*. A similar duty commenced under the *Disability Discrimination Act 1995* in December 2006 and under the *Race Relations Act 1976* in 2001. Federal Plan for Gender Equality', administered by Status of Women Canada.

- 7.46 The reporting requirements currently existing for private sector organisations should be continued but changed to biennial reporting rather than annual reporting in recognition of the time required to develop and implement organisational changes. The access to waivers for those organisation who have achieved their accreditation should also continue to be available.
- 7.47 EOWA believes that biennial reporting is an appropriate approach:
 ... if it recognises the time required to consult with staff, do significant analysis and put in place appropriate interventions and policies that address the real issues rather than just being window-dressing but also if it enables EOWA to focus on education as well as the regulation.⁴⁹

Recommendation 27

That all organisations with 100 or more employees be required to report biennially to the Pay Equity Unit within Fair Work Australia on the implementation of a diversity plan to increase pay equity.

- 7.48 Work by Close the Gap in Scotland prepared Human Resources guidance and appropriate tools for small to medium firms but found it difficult to persuade these businesses to undertake audits in a voluntary system.⁵⁰ Ms Emma Ritch stated that the pay equity principles that are involved are 'not particularly onerous' and that the complexity increases with the increase in the number of staff.⁵¹ There are a range of barriers to organisations undertaking pay equity audits:

These include the perceived level of time and resources needed to complete the audit, a lack of understanding of the ability of a pay equity audit to deliver tangible results, and an unwillingness to confront potential problems identified by the data analysis.⁵²

49 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, pp. 26-27.

50 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 4.

51 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 8.

52 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 27.

- 7.49 Given the number of women in Australia employed by small businesses that this is an important part of the work in reducing the pay gender gap. Diversity plans for smaller organisations will have an educative value to make firms think about pay equity issues, but attempting to convince Australian small and medium businesses of the importance of addressing pay equity issues would be similarly difficult. This information is important, however, if Australia is to make progress in achieving pay equity and benefiting from associated economic gains.
- 7.50 The model used in Quebec is also based on the number of employees in a particular business:
- That is a recognition by the government of smaller businesses. The government body is taking up some of that extra work on behalf of the smaller sized businesses and then saying to an organisation of over 100 employees, 'You have the resources to do some of this yourself, so we'll ask you to do it yourself.' They are getting the basic data from the small, under 10, employers and then they are looking at what that data means rather than asking the employers to do that.⁵³
- 7.51 In Australia, the Australian Taxation Office already collects wages information from employers. The information required by the Pay Equity Unit is therefore largely already collected by a government agency and should be made available to the unit in an aggregate form. At an aggregate level the ATO holds information by size of business, by location, by occupation, that would be relevant to the work of the proposed Pay Equity Unit and for the use of the Deputy President of Fair Work Australia who has responsibility for the Pay Equity Unit. The new Pay Equity Unit should be able to obtain wages and salary and other relevant information from the ATO on private companies and other organisations with 15 or more employees. Accordingly the Committee recommends:

53 Ms Belinda Tkalcevic, Legal/Industrial Officer, Australian Council of Trade Unions, *Official Transcript of Evidence*, 3 April 2009, Melbourne, pp. 15-16.

Recommendation 28

That the Pay Equity Act include a schedule for the amendment of the *Taxation Administration Act 1953*, specifying that the Commissioner be enabled to disclose aggregate wages and salary and other relevant information acquired under the taxation law to a Pay Equity Unit officer if the Commissioner is satisfied that the request is relevant and necessary to the work of the Unit.

- 7.52 This approach will enable the Pay Equity Unit to analyse many of the pay equity issues on an industry and occupational basis. Once areas of significant discrepancies are identified, the Pay Equity Unit may require further information from those groups for additional analysis.
- 7.53 Reporting by small to medium firms should also be mandatory if a specific request is made to the organisation by the Pay Equity Unit. This approach will enable a phasing in of pay audits to address the more urgent situations without unnecessarily burdening those industries where the issues are less extreme. Accordingly the Committee recommends:

Recommendation 29

That the proposed Pay Equity Act include a provision making it mandatory for small and medium businesses to be required to submit an audit report in response to a specific request from the Pay Equity Unit.

- 7.54 Reporting by smaller firms should not be too onerous and an appropriate set of reporting requirements should be developed which are simpler and less resource intensive than those currently available. It was suggested that focusing on good indicators such as starting salary and performance pay would provide some indication as to whether further information should be sought.⁵⁴ This reporting could be incorporated within an existing process such as BAS statement or superannuation statements of smaller companies.

54 Dr Kathy MacDermott, Adviser, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 20 August 2009, p. 11.

7.55 The reporting process would serve two purposes: one is to alert people where there is an issue; the other is to try and improve the quality of the information available to the people whose job it is to address that issue, so that they can do so with greater success. Information gained through this process would enable organisations such as Fair Work Australia, the Fair Work Ombudsman and the Australian Human Rights Commission to identify particular industries or workforce sectors where additional investigation is required.

Research function

7.56 The establishment of a Pay Equity Unit with an adequate research role would provide the required information to form the basis for future policy directions and enable Australia to meet its international obligations. Research in Australia should include economic modelling to demonstrate the productivity costs to the Australian economy of the persistence of a substantial gender pay gap.⁵⁵ Information of this type has had a significant impact on the awareness in the British context. Research in this area has already been conducted by the EOWA.⁵⁶

7.57 The Pay Equity Unit must also have the capacity and resources to undertake monitoring and research into wages and conditions. Australian Human Rights Commission also suggested the need to investigate the undervaluation and comparative worth in female dominated industries and occupations, particularly focusing on recognising 'soft' skills involved in caring work, knowledge work and communication, employee qualifications and on the job training as well as changing job demands and increased technology.⁵⁷

7.58 Under ILO Convention 100 in relation to Equal Remuneration for Work of Equal Value, Australia is required to undertake industry comparisons.⁵⁸ The International Labour Organisation's Committee of Experts has commented on the deficiencies in many ratifying countries in relation to ILO Convention 111, the *Convention Concerning Discrimination in Respect of Employment and Occupation*, specifically:

- Insufficient data and research;
- Lack of understanding of equal value;

55 See discussion in Diversity Council Australia, *Submission No. 110*, p. 20.

56 Equal Opportunity for Women in the Workplace Agency, *Submission No. 113*, pp. 14 -22.

57 Australian Human Rights Commission, *Submission No. 108*, p. 24.

58 See discussion in *ILO Equal remuneration: General Survey* by the Committee of Experts on the Application of Conventions and Recommendations, International Labour Office, Geneva, 1986, p. 10 cited in Group Training Australia, *Submission No. 45*, p. 4.

- Ignorance of the job evaluation processes necessary for determining the relative value of jobs; and
 - Inadequate financial resources for collection of data and instituting appropriate job evaluation schemes.⁵⁹
- 7.59 The functions of the research facility within the Pay Equity Unit would include:
- developing appropriate tools and programs to assist employers to design pay equity plans and implement the audits for reporting purposes;
 - preparing guidelines to assist employers in implementing the requirements under the act;
 - monitoring and evaluating the effectiveness of workplace programs;
 - preparing relevant reports to the Minister and Government on wages and conditions and changes in pay equity outcomes;
 - providing information and assistance to employers through the maintenance of a website (discussed below); and
 - facilitating the collection of consistent and comparable data and liaising with Australian Bureau of Statistics and other relevant Federal departments and the Australian Public Service Commission, State and Local Governments, research institutions, business and industry bodies, unions and other relevant groups.
- 7.60 The Australian Services Union saw the role of a special unit in Fair Work Australia as gathering data, publicising best practice, issue regular updates on the achievement of equal remuneration.⁶⁰ A number of changes would be needed to ensure the effectiveness of this approach and should include:
- an amendment the Fair Work Act to extend the statutory research obligations of Fair Work Australia to conduct three yearly reports to include additional three yearly separate reporting on pay equity;
 - a requirement that for pay equity purposes the data must be disaggregated on the basis of gender and, in recognition that additional factors impact on pay equity, include also disability, age, ethnicity, child care responsibilities, marital status, region and employment status.

59 Group Training Australia Ltd, *Submission No. 45*, p. 5.

60 Ms Jo Justo, National Industrial Officer, Australian Services Union, *Transcript of Evidence*, 31 March 2009, p. 61.

- requiring the provision of data by the Australian Bureau of Statistics and Australian Taxation Office on an occupation and industry basis and which is able to track trends over time.
- the establishment of a cross agency working group to ensure the data collection is comprehensive and fit for purpose;
- the availability of data, research and analysis for tri-annual reporting to Fair Work Australia with an obligation on the relevant Minister to table the report in Parliament; and
- provision for data to be made available for industry and occupational analysis at the direction of Fair Work Australia for the purpose of exercising its own functions under the Act (for example equal remuneration case or annual wage review).

- 7.61 Associate Professor Taksa and Dr Anne Junor suggested that the reviews should be allowed at industry, sector and occupational levels and include work value, occupational segregation and the fit between paid and unpaid work.⁶¹ Industry specific benchmarking information should be made available.⁶²
- 7.62 WISER called for 'a comprehensive research program systematically examining the wages and conditions in key industries and occupations in which minimum wage women workers are employed'.⁶³
- 7.63 A comprehensive research function of the Pay Equity Unit is required because arguing pay equity cases is impossible without reliable accurate and up to date data on pay and conditions in industries and occupations when performing a gender neutral work value evaluation. Fair Work Australia needs reliable pay equity data to perform its award and minimum wage fixing functions. Furthermore, the data is necessary for Australia's reporting obligations under ILO and CEDAW.
- 7.64 Much of the data collection is likely to be obtained through existing systems but must be disaggregated if it is to be useful in providing measurement of progressive elimination of employment inequality. Disaggregation needs to be specified in the legislation or this may be overlooked in favour of using existing data sets that do not provide adequate information.

61 Associate Professor Taksa and Dr Anne Junor, *Submission No. 109*, p. 7.

62 Law Council of Australia, *Submission No. 144*, p. 11.

63 WISER 2006 *Towards a Database of Women's Employment Status Key Indicators*, p. xviii.

- 7.65 Reporting that is independent from government would be a key feature of the Pay Equity Unit. The Pay Equity Unit should provide a report every four years, one year prior to Australia's reporting requirements under the international treaties such as CEDAW.⁶⁴

Educative function

- 7.66 The Pay Equity Unit would also have an educative role and would provide information to the public on the legislation; assist in training; work value processes; the development of workplace plans and programs; undertaking audits; and the requirements under the reporting obligations. EOWA currently provide an extensive range of resources available for the information of employers, government, media and the community.⁶⁵
- 7.67 The establishment of a website for employers and employees would be beneficial. The publishing of market pay scales for occupations across a broad range of industries would provide guidance for negotiations and career choices.⁶⁶
- 7.68 The website should provide accessible and timely information in relation to employment changes would be appreciated by some businesses. Fuji Xerox Australia utilise the Australian Bureau of Statistics specific market and demographic information but would like to an improvement in the timeliness and relevance of data that could provide some insight to pay equity and female workforce participation.⁶⁷
- 7.69 The Western Australian Department of Consumer and Employment Protection stated:

In Australia, the provision of greater salary information to all employees would assist in overcoming transparency issues and support women in particular in negotiating salaries that appropriately reflect their skills and the market rates for their occupations. Fair Work Australia, as part of its education function, would be an appropriate body to monitor and publish pay scales for occupations and industries across Australia.⁶⁸

64 See comments by Commissioner Elizabeth Broderick, Sex Discrimination Commissioner, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, p. 15.

65 Equal Opportunity for Women in the Workplace Agency, *Submission No. 113*, p. 13.

66 See Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 4. See also The Victorian Bar, *Submission No. 141*, p. 3.

67 Fuji Xerox Australia, *Submission No. 79*, p. 3.

68 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 32.

7.70 Furthermore:

In the commercial world, companies can buy wage data to set their wage rates and it would be beneficial for employees to have similar data available publicly for individual wage negotiations. For employers, market rate pay scales will help them benchmark their salaries. The provision of greater salary information to all employees would assist in overcoming issues of secrecy of wages in employment contracts and empower women in particular to negotiate salaries that appropriately reflect their skills and the market rates for their occupations. Fair Work Australia will have access to collective agreements and could use these to develop a list of wage rates, updated quarterly and made available to the public.⁶⁹

7.71 The Equal Employment Opportunity Network of Australasia also saw value in ‘incentivising’ the achievement of best practice and not just seeking compliance.⁷⁰ The Victorian Government has also introduced an employer recognition program.⁷¹ Electrolux stressed policies need to promote and reward initiatives that encourage female participation and ‘not merely mandate the bare requirements’.⁷²

7.72 The promotion of pay equity principles and undertake initiatives such as the Employer of Choice for Women Awards and to undertake other initiatives to encourage best practice. Employer of Choice for Women awards is highly regarded.⁷³ Employers of Choice for Women are required to demonstrate a pay gap less than the industry average.⁷⁴

7.73 The Employer of Choice for Women were considered beneficial in encourage larger companies to proactively participate in attaining pay equity. EOWA releases annually a list of non-government organisations who achieve Employer of Choice for Women status as that ‘recognise and advance their female workforce’. The Committee would like to see this

69 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 33.

70 Ms Juliet Bourke, Chair, Equal Employment Opportunity Network of Australasia, *Transcript of Evidence*, 26 September 2008, p. 81.

71 Mr Russel Bancroft, Officer, Department of Innovation, Industry and Regional Development, Victoria, *Transcript of Evidence*, 2 April 2009, p. 18.

72 Electrolux Home Products Pty Ltd, *Submission No. 105*, p. 4.

73 Ms Mairi Steele, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 20 August 2009, p. 11.

74 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 24.

program continued in the Pay Equity Unit and extended to awards for medium and small business categories

Recommendation 30

That the Employer of Choice for Women Awards be extended to medium and small business categories.

7.74 An important aspect of successful education is adequate resourcing of the Pay Equity Unity. The Pay Equity Unit in Western Australia argued that is fundamental to have the capacity to provide direct assistance to employers.⁷⁵ EOWA added that:

what we do not have is the resources to assist employers more actively with how to use the tool, how to understand the scenarios that may be playing out in their workplace and then how to put in place a pay action plan to address the gap. That is what this proposal is about in relation to a three-year period to look at how you might expand that more broadly across employer groups and industries.⁷⁶

7.75 The Chamber of Commerce and Industry in Western Australia confirmed that:

... employees that are undertaking those audits, too, need to be properly trained and properly equipped to understand what it is that they are doing and what they are seeking to achieve.⁷⁷

7.76 In situations where there is a need to comply, the regulation becomes the focus of attention rather than education.⁷⁸ The Chamber of Commerce and Industry Western Australia added that:

Employers will not be happy if they are forced to introduce pay equity audits by legislation, because there will be time frames and a whole lot of compliance things that will make it more difficult

75 Ms Jenness Gardner, Manager, Pay Equity Unit, Department of Commerce, Western Australian Government, *Transcript of Evidence*, 26 February 2009, p. 11.

76 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 22.

77 Ms Marcia Kuhne, Director, Workplace Relations Policy, Chamber of Commerce Western Australia, *Transcript of Evidence*, 5 November 2008, p. 45.

78 Ms Marcia Kuhne, Director, Workplace Relations Policy, Chamber of Commerce Western Australia, *Transcript of Evidence*, 5 November 2008, p. 46.

for them to be introduced compared to how they might have introduced them if they went about it in a more positive fashion over a longer period of time.⁷⁹

7.77 However, it is important that the significance of pay equity is understood and that pay equity becomes a promotion of best practice.

7.78 It is important that the business imperative and economic rationale of pay equity is understood⁸⁰ and that industry is convinced that this will make a difference to female participation in the workforce. The key outcomes of embracing pay equity need to be identified and measured against achievable Key Performance Indicators.

7.79 The work of the Pay Equity Unit would be seen to complement the work of the Fair Work Ombudsman who works with employees, employers, contractors and the community to promote harmonious, productive and cooperative workplaces. The Fair Work Ombudsman:

Provides advice and education on Australia's Workplace laws;
Monitors compliance and investigates contraventions of national workplace laws;
Publishes information on workplace rights and obligations; and
Provides tools and information for small businesses.

7.80 The National Australia Bank conducted a pay equity audit and has subsequently introduced a number of initiatives such as including diversity and flexibility in the five-year strategic agenda and human capital strategy:

In summary, we believe that the audit process provided us with useful insights into our workforce and our culture and with the opportunity to make a real difference to our female employees through the adoption of programs and initiatives to support them in their careers and roles at NAB. I suppose our diversity agenda was, in part, shaped by the audit findings.⁸¹

7.81 Close the Gap in Scotland provides guidance for trade unions on how to use gender equality duty in the bargaining and negotiating processes and provides training to union representatives on how to deal with equal pay

79 Ms Marcia Kuhne, Director, Workplace Relations Policy, Chamber of Commerce Western Australia, *Transcript of Evidence*, 5 November 2008, p. 56.

80 Ms Susan Heron, Chief Executive Officer, Australian Institute of Management, Victoria and Tasmania, *Transcript of Evidence*, 4 December 2008, p. 5; Ms Nareen Young, Executive Director, Diversity Council Australia Ltd, *Transcript of Evidence*, 26 September 2008, p. 41.

81 Ms Dorothy Hisgrove, Head, people and Change, National Australia Bank, *Transcript of Evidence*, 2 April 2009, p. 98.

differences in their workplace.⁸² In the United Kingdom where gender pay audits are not mandatory, trade union pressure has been found to be a large factor in encouraging pay reviews.⁸³

- 7.82 All of the above suggestions could be considered for implementation by the Pay Equity Unit.
- 7.83 The Australian Institute of Management Victoria and Tasmania commented that the Australian business sector has not fully engaged in the pay equity issue.⁸⁴ Equal Employment Opportunity Network alluded to a view that there can be a competitive advantage in constraining wages, in the case of paying women less and therefore pay equity is not a business priority.⁸⁵ AIM suggested that a body be established to connect with industry which should comprise government and industry representatives to look at practical solutions and the best approach to achieve some outcomes.⁸⁶
- 7.84 A formal consultation process should be established to provide input from stakeholders on the activities of the Pay Equity Unit. One such model could be the Victorian Human Rights and Equal Opportunity Commission where the board has 'sufficient capacity to provide strategic oversight of the commission's broad responsibilities'.⁸⁷ The Australian Institute of Management added that:

... Government needs to get much better input and commitment from the private sector on how to solve the problems confronting the pay equity and participation crisis. It is apparent that existing organisations within Government such as the Equal Opportunity for Women in the Workplace Agency (EOWA) and the Sex Discrimination office within the Human Rights and Equal Opportunity Commission provide valuable insights on the problems facing women in the workplace. However, there appears to be scope to provide Government with ongoing, high quality

82 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 5.

83 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 5.

84 Ms Susan Heron, Chief Executive Officer, Australian Institute of Management, Victoria and Tasmania, *Transcript of Evidence*, 4 December 2008, p. 1.

85 Ms Juliet Bourke, Chair, Equal Employment Opportunity Network of Australasia, *Transcript of Evidence*, 26 September 2008, p. 84.

86 Ms Susan Heron, Chief Executive Officer, Australian Institute of Management, Victoria and Tasmania, *Transcript of Evidence*, 4 December 2008, p. 2.

87 Ms Sarah Tuberville, Officer, Department of Innovation, Industry and Regional Development, Victoria, *Transcript of Evidence*, 2 April 2009, p. 8.

input on ways for organisations to attract and retain women in the workforce - not just identify the issues that need to be addressed.⁸⁸

7.85 The Australian Institute of Management suggested that the Government consider:

... the establishment of an independent, government owned organisation charged with engaging with industry to cultivate new approaches to overcome the problems preventing pay equity and higher participation rates. This organisation, small in scale, would be at arms length from the day to day operations of Government and would be structured as a company with a mix of government and business people on its Board. It would provide a key forum for the development and implementation of reform initiatives and elevate the importance of pay equity and participation on the business agenda. The organisation would require Government funding commitment for the first three to five years of its operations but thereafter the funding model could be transformed to see the private sector contribute the lion's share of the organisation's costs.⁸⁹

7.86 The Australian Institute of Management suggested that the proposed board should include prominent business persons who are well regarded in the business community.⁹⁰

7.87 The Finance Sector Union of Australia also stressed the importance of industry level consideration due to the complexities of the issues surround the pay gender gap.⁹¹

7.88 The Association of Professional Engineers, Scientist and Managers suggested the establishment of committees comprising key stakeholders in segments of the workforce such as specific industries or professions as there are more likely to be positive outcomes with the constructive engagement of unions, employer organisations and major employers.⁹²

7.89 As discussed above, the information from the Australian Taxation Office would facilitate the identification of industries or sections of industries where pay inequity was more prevalent. This would enable the Pay Equity Unit to form committees comprising employers, unions, employees and

88 Australian Institute of Management, *Submission No. 104*, p. 2.

89 Australian Institute of Management, *Submission No. 104*, p. 2.

90 Australian Institute of Management, *Supplementary Submission No. 104.1*, p. 2.

91 Finance Sector Union of Australia, *Submission No. 122*, p. 1.

92 Association of Professional Engineers, Scientist and Managers, *Submission No. 121*, p. 7.

other stakeholder to work together to develop appropriate measures relevant to that specific situation.

Recommendation 31

That the Deputy President of Fair Work Australia responsible for the Pay Equity Unit be required to seek advice through the appointment of an advisory board comprising unions, employers and employer groups and other stakeholders to provide strategic input in relation to industry specific strategies.

Measuring outcomes of the Pay Equity Unit

7.90 The union peak bodies suggested:

A system is required to effectively analyse the effectiveness of the pay equity provisions of the Act and the equal remuneration scheme as a whole. Analysis should include measurement of the prevalence of pay inequity, the effect of measures to address the key sources of pay inequity and the relative effectiveness of the pay equity scheme in delivering remedies to pay inequity.⁹³

In Australia the WA Office of Women's policy keeps a modest score card against indicators such as representation of women in public life, labour force participation, health and well being of women and the number of women in senior positions and so on.⁹⁴

7.91 An important aspect of the establishment of the Pay Equity Unit would be the development of a longitudinal data collection. The Unit should be established with the view that its operation be ongoing subject to the successful meeting of a defined set of KPIs. While it is envisaged that the need for a Pay Equity Unit would only be necessary until pay inequity is addressed, the reality is that the situation is complex and intractable political problem, further complicated in Australia by the fact that Australia is a federation. There needs to be considerable effort towards affecting a long term change.

⁹⁴ Australian Council of Trade Unions and Joint State Union Peak Councils, *Submission No 125*, p. 40.

7.92 The Scottish approach is to measure:

The national pay gap figure [as] one of the indicators [of] success... the difficulty with that in that the headline pay gap figure is a lagging indicator and it is also an incredibly blunt tool for measuring progress.⁹⁵

7.93 The development of an appropriate set of performance measures is also a complex task. The use of the pay gender gap in itself, while it is an important measure, is not sufficient because of the lag factor and a number of other factors that can impact on this measure that would be beyond the scope of a Pay Equity Unit. The New Zealand experience has been that:

While some stakeholders have expected that the main yardstick of progress in the Plan of Action would be an early reduction in the gender pay gap, there are many reasons that it is too blunt a measure. The proportion of employed people covered by reviews by June 2009 is around 13.5%. Most – perhaps 80% – of the gender pay gap reflects occupational segregation, and changes in occupational segregation are inevitably slow since the existing stock of workers in highly segregated occupations is large and even if new entrants did enter different occupations it would take a long time for workforce composition to change. This is especially so where entry to occupations is through acquiring qualifications which can take some years and is in turn related to choices of subjects and vocational orientations at school. Sustainable change in complex HR, management and employment relations processes is not quickly or easily made.⁹⁶

Equal Opportunity for Women in the Workplace Agency

7.94 The Equal Opportunity for Women in the Workplace Agency currently monitors employers of 100 or more employees in relation to seven employment matters of which pay equity is one and the other aspects all impact on pay equity.⁹⁷ The agency focuses on improving women's workforce participation.⁹⁸ Businesses are required to report annually on the implementation of a pay equity program in relation to discrimination, recruitment and promotion, work organisation, sexual harassment and

95 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 2.

96 New Zealand Department of Labour, *Submission No. 148*, p. 11.

97 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 17.

98 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 18.

training and development.⁹⁹ The data collected by EOWA is largely qualitative and is used by businesses to benchmark, to understand best practice and to introduce change.¹⁰⁰

7.95 On 1 June 2009 the Minister for the Status of Women, the Hon Tanya Plibersek MP, announced a review of EOWA and its underlying legislation, *Equal Opportunity for Women in Workplace Act 1999*.¹⁰¹

7.96 The former director, Ms Anna McPhee, commented that:

Pay equity is just one component of the seven employment matters that we work with employers on, but the seven employment matters, like access to training and development and work organisation, all impact on the pay equity situation for women.¹⁰²

7.97 The current role and the functions of the EOWA would be subsumed into the structure of the proposed Pay Equity Unit within Fair Work Australia. While pay equity is central to gender equality, it is not the total sum and the current work of the Equal Opportunity for Women in the Workplace Agency is broader than this. The work of EOWA in relation to training, promotion and representation of women and other matters could be incorporated within the role of the Pay Equity Unit to strengthen the cooperation and coordination of these efforts. Accordingly the Committee recommends:

Recommendation 32

That the Equal Opportunity for Women in the Workplace Act 1999 be repealed and the functions of the office be incorporated in the proposed Pay Equity Act.

99 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 19.

100 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 19.

101 Plibersek, T (Minister for the Status of Women) 2009, *Government announces review of Equal Opportunity for Women in the Workplace Agency*, media release, Parliament House, Canberra, 1 June 2009.

102 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 17.

Administrative approaches

- 8.1 In addition to proposed legislative changes an array of administrative measures may promote pay equity. The systemic nature and the persistence of a gender wage gap in Australia means that it is unlikely that changes to the legislative regime alone will be able to achieve this outcome. There needs to be a significant shift in community culture and this can also be progressed through the implementation of pay equity considerations across all relevant government activities.

Commonwealth procurement policy

Achieving pay equity through Commonwealth contracts

- 8.2 Modern public administration has increasingly used contracts as a way of achieving public policy goals. This is in part due to the extension over time of areas of government activity and more recently the trend toward outsourcing public functions to private and non-government entities. This inquiry and similar inquiries in Queensland and New South Wales have received proposals that government procurement policies be used as a mechanism to promote pay equity.
- 8.3 According to Seddon, it is generally accepted that the Commonwealth's executive power is limited under the Constitution by the legislative heads of power set out in section 51.¹ The same does not apply to the states and

1 Dr Nicholas Seddon, 2003, 'The Interaction of Contract and Executive Power' *Federal Law Review* 14; see also *Government Contracts: Federal, State and Local* (2nd ed, 1999).

territories where executive power is not limited by references to subject matter.² Seddon goes on to comment that:

There is much academic controversy about precisely what the limits on the Commonwealth's power to contract actually mean in a practical sense, but it is reasonably safe to say that the limits impose no real fetter on the Commonwealth's power to enter into contracts, with the result that the Commonwealth is for practical purposes in the same position as the states and territories, enjoying an unlimited power to enter into contracts.³

- 8.4 This suggests that there is no constitutional limit on the class of persons and business entities the Commonwealth can form an agreement with for goods and services. For example, requiring employers to meet specified standards as a condition of receiving direct Commonwealth funding to aged care and child care facilities may be a way of encouraging pay equity in those sectors. This raises questions, however, of how such requirements might fit with modern award process, minimum wage setting, and enterprise bargaining.
- 8.5 As a general rule, the Commonwealth can use its executive power to enter contracts, without the need for any statutory basis. However, the manner in which procurement takes place is governed by the *Financial Management and Accountability Act 1997* (Commonwealth) and *Regulations* (SLR 2009 No. 41) and *Commonwealth Procurement Guidelines*.

Financial Management and Accountability Act 1997

- 8.6 Under s. 44 (1) of the *Financial Management and Accountability Act 1997* (FMA), Chief Executives have special responsibility to promote efficient, effective and ethical use of Commonwealth resources. The CEO of a Commonwealth agency has the power to enter into contracts, on behalf of the Commonwealth, in relation to the affairs of the agency and, in doing so, must comply with FMA, the regulations, Finance Minister's Orders, Special Instructions and any other law (s. 44 (2)). Proper use means efficient, effective and ethical use that is not inconsistent with the policies

2 *New South Wales v Bardolph* [1934] HCA 68; (1934) 52 CLR 455, 474–5 (Evatt J); *Building and Construction Employees and Builders Labourers Federation of New South Wales v Minister for Industrial Relations* (1986) 7 NSWLR 372.

3 Dr Nicholas Seddon, *Government Contracts: Federal, State and Local* (2nd ed, 1999). Even if there is a limit, it is very unlikely that anyone would mount a legal challenge because it would be a constitutional, and therefore expensive, case. Running such a case would also be uncertain in outcome because of the controversy about what the limits actually mean in practical application.

of the Commonwealth (s. 44 (3)). The Regulations allow the Minister to issue the *Commonwealth Procurement Guidelines* to which officials must have regard when performing procurement duties.⁴ The Act and the Regulations envisage a wide discretion for the Minister to determine how Commonwealth contracts are negotiated and administered.

8.7 The current Procurement Guidelines include the requirement that a finance officer must not discriminate on the grounds of sex, race, and disability in the procurement process (para. 5.2). The rule of non-discrimination is consistent with federal discrimination law (which applies to acts and practices of the Commonwealth) and is part of the procurement policy commitment to effective competition (para. 5.1).

8.8 However, the Guidelines contain:

- no specific principle of affirmative action for female owned businesses even though small business is dominated by women;
- no specific requirement to assess a contractor's performance under Commonwealth law, such as the *Sex Discrimination Act 1984*;⁵ and
- no current requirement that a contractor comply with a pay equity obligation to meet pay equity goals or targets over a specified period or provide pay equity analysis.

8.9 In relation to policies that interact with procurement, the Commonwealth Procurement Guidelines state that:

The FMA Regulations require that an approver must not approve a proposal to spend public money unless satisfied, after reasonable inquiry that it is in accordance with the policies of the Commonwealth.⁶

8.10 Given that approval is required to be in 'accordance with the policies of the Commonwealth', firms should not be eligible for government procurement contracts if they have not met the requirements under the proposed pay equity legislation. This raises the question as to whether pay

4 Reg 8(2) requires an official to make a written record of his or her reasons for not acting consistently with the Guidelines.

5 Paragraph 5.2 states that all potential suppliers must be treated equally based on their legal, commercial, technical and financial abilities and procurement methods must not discriminate against potential suppliers due to their degree of foreign affiliation or ownership, location or size.

6 *Commonwealth Procurement Guidelines*, December 2008, Financial Management Guidance No. 1. p. 7.

equity could be usefully incorporated into the existing Procurement Guidelines.

- 8.11 The Equal Opportunity for Women in the Workplace Agency has received calls from business requesting information on compliance with the intention of applying for government business.⁷
- 8.12 One example of parties from which services were procured was the Commonwealth Attorney General's Department. The Victorian Bar stated that Attorney-General's would not provide its Equal Opportunity Committee with information on the briefing arrangements in relation to male/female number of briefs and fees.⁸ The Victorian Bar indicated that there may be a bias towards males in government contracts, although it acknowledged many variables such as seniority, expertise and the tendency for women to brief in areas of welfare and child protection matters would influence the awarding of briefs.⁹
- 8.13 The Australian Women Lawyers found that junior females received on average 1.4 hours for a brief while for men the average was 223 hours. The Victorian Bar pointed out that:
- ... women receive a higher proportion of government briefs than their representation at the Bar, they receive a significantly lower proportion of fees for that work.¹⁰
- 8.14 The transparency and accountability requirements on Commonwealth departments are not sufficient to enable a peak industry body to obtain aggregated data for research. The Procurement Coordinator ought to investigate, as a matter of urgency, the adequacy of practical implementation of the procurement guidelines to ensure that the outcome meets the equal remuneration criteria.

7 Ms Mairi Steele, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 20 August 2009, p. 9.

8 Ms Meredith Schilling, Member, Victorian Bar, *Transcript of Evidence*, 18 June 2009, pp. 17-18; Ms Fiona McLeod, Chair, Equal Opportunity Committee Victorian Bar, *Transcript of Evidence*, 18 June 2009, p. 19.

9 See discussion Ms Meredith Schilling, Member, Victorian Bar, *Transcript of Evidence*, 18 June 2009, pp. 20-21.

10 The Victorian Bar, *Submission No. 141*, p. 5. The Victorian Bar acknowledge that some of this variation may be due to the small numbers of female senior counsel (typically the highest earning barristers) and the prevalence of women in less well paid areas (such as welfare and child protection matters), it appears that women barristers appear to be achieving consistently lower fees even in those jurisdictions where greater homogeneity of experience can be assumed.

Recommendation 33

That the Government require the Procurement Coordinator monitor the application of the Commonwealth Procurement Guidelines by agencies to ensure that firms that are not compliant with relevant pay equity principles are not eligible for Commonwealth contracts.

8.15 The annual reports of departments should include information on implementation of the Procurement Guidelines which would contain the type of data discussed above.

8.16 This approach should be acceptable by and provide valuable information to the business community:

The UK Equalities Review found that there was evidence that using procurement to promote equality in employment is generally accepted by the business community to be a sensible approach for government to take further that requiring suppliers to follow sound equity principles could have a profound impact.¹¹

8.17 The Victorian Government has found the use of purchasing power for law firms has increased the amount of work received by women.¹²

Recommendation 34

That the Procurement Coordinator investigate, as a matter of urgency, the adequacy of practical implementation of the Procurement Guidelines to ensure that the outcome meets relevant pay equity principles.

8.18 In the United States of America, there have been consecutive Executive Orders applying affirmative action principles to federal procurement policy aimed at promoting substantive equality through access to government contracts for female owned businesses. However, the policy has been restricted to a narrow range of industries in which women are

11 Work and Family Policy Roundtable, *Submission No. 143*, p. 21 citing Rubenstein M, 2007, *Equality, the Private Sector and the Discrimination Law Review: A preliminary Report*, Report presented to the Seminar on Discrimination Law Review, 27 June 2007, Greater London Authority, pp. 17-18 at www.edf.org.uk/news/MichaelRubenstein.doc.

12 Work and Family Policy Roundtable, *Submission No. 143*, p. 22.

considered to be under-represented and criticised for taking too narrow an approach to measuring under-representation. The women's procurement program created by Congress in 2000 mandates a five per cent contracting goal for women owned small business, but according to media reports, agencies continue to fall short of that target.¹³ The lesson from the US may be that, even where affirmative action principles are applied, it must be crafted in a way that does not entrench inequality. While this approach has not been recommended, it represents another method of application that the Government may wish to consider.

Industry assistance

- 8.19 Industry assistance provides an additional avenue for government to insist on compliance with pay equity principles. This is increasingly important in the light of recent government initiatives to assist small and medium businesses.¹⁴ Countries receiving aid from Australia are required to have a gender equality plan and this principle should also be implemented within Australia.
- 8.20 Some industry assistance is provided subsequent to compliance of the recipients with the *Equal Opportunity for Women in the Workplace Act 1999*. The Government should take steps to ensure that the same conditions apply in relation to pay equity principles. Further, given the importance of the systemic application of the pay equity principles, the Government should revise its current list of applicable industry assistance to ensure that all appropriate forms of industry assistance are included.
- 8.21 Accordingly, the Committee recommends:

13 Ms Elizabeth Newell, *Omnibus provision suspends controversial women's procurement regulation*, Government Executive at <http://www.govexec.com/dailyfed/0309/031309e1.htm>, March 13, 2009, accessed 16 November 2009.

14 See Dr Kathy MacDermott, Adviser, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 20 August 2009, p. 10.

Recommendation 35

That Government ensure that industry assistance is only provided to firms that are compliant with pay equity principles and that the outcome of the assisted program is compliant with the pay equity principles.

Recommendation 36

That the Government revise the current list of industry assistance programs to ensure that a compliance requirement with pay equity principles is applied to all appropriate funding allocations.

Promoting pay equity through the federal grants power

8.22 Section 96 of the Constitution provides the Commonwealth Parliament with the power to ‘grant financial assistance to any State on such terms and conditions as the Commonwealth thinks fit’. The application of section 96 is extremely broad, and, has enabled the Commonwealth to spend to influence policy, and direct activities in areas of state jurisdiction that it has no constitutional power to effect directly.

8.23 A grant may:

- require the State to apply the money to a general or specified purpose;¹⁵
- be left to the discretion of a Federal Minister (and paid periodically);
- be provided on condition the State matches the grant with contribution from its own funds;¹⁶ or
- require the State to pay the money to a designated class of beneficiaries to fulfil a purpose pursued by the Commonwealth.¹⁷

15 *Victoria v Commonwealth (Uniform Tax Case (No.2))* (1957) 99 CLR 575 at 604,605,607; [1957] ALR 761; (1957) 31 ALJ 369 11 ATD 317 per Dixon CJ.

16 *Victoria v Commonwealth (Uniform Tax Case (No.2))* (1957) 99 CLR 575 at 604,605,607; [1957] ALR 761; (1957) 31 ALJ 369 11 ATD 317 per Dixon CJ.

17 *Victoria v Commonwealth (Uniform Tax Case (No 2))* (1957) 99 CLR 575 at 607; [1957] ALR 761; (1957) 31 ALJ 369; 11 ATD 317 per Dixon CJ. See also *Deputy Commissioner of Taxation (NSW) v WR Moran Pty Ltd* (1939) 61 CLR 735; [1939] ALR 357; (1939) 13 ALJ 205; 5 ATD 204 (validity of a grant of financial assistance to the States, conditioned on the recipient States transmitting the

- 8.24 The Commonwealth may, if it chooses, also bypass the states altogether and provide funds directly to a recipient organisation operating in areas of state jurisdiction.¹⁸
- 8.25 Through the use of special purpose grants the Commonwealth is active in healthcare, schools, skills and workforce development, disabilities services; and affordable housing. It provides funds to local government and private schools through the states. The National Foundation for Australian Women suggested that funding to rural entities be made contingent on improved board diversity.¹⁹
- 8.26 A state may not be coerced into accepting a grant (legally speaking) but any state that accepts a grant of financial assistance must abide by the terms and conditions attached to the grant.²⁰ Given the opportunity to impose terms and conditions on states that accept Commonwealth funds, the question arises as to whether s.96 grants offer a practical and effective mechanism through which to implement pay equity goals.
- 8.27 Section 96 enables the Commonwealth to influence policy; direct the way a service is delivered working with and through the states as partners or agents in the expenditure of public funds to fulfil Commonwealth purposes.
- 8.28 Technically speaking, the application of s. 96 is extremely broad and enables the Commonwealth to impose 'terms and conditions as it thinks fit'.²¹ However, there are practical and political considerations that suggest this approach may only be employed with significant support from the states. There are also some potential conflicts that might arise if a term of a s.96 grant conflicts with a state based industrial instrument.

assistance to identified taxpayers in proportion to the taxes paid by them, upheld); *Attorney-General (Vic); Ex rel Black v Commonwealth (DOGS Case)* (1981) 146 CLR 559; 33 ALR 321; 55 ALJR 155 (Commonwealth Parliament could grant financial assistance to the States on condition that the recipient States paid over that assistance to private schools nominated by the Commonwealth).

18 Parties? (1975) 134 CLR 338 (*AAP Case*)

19 National Foundation for Australian Women, *Submission No. 94*, p. 6.

20 Provided compliance with the terms and conditions does not involve the State in a breach of a law; *South Australia v Commonwealth (Uniform Tax Case (No 1))* (1942) 65 CLR 373; [1942] ALR 186; (1942) 16 ALJ 109; 7 ATD 1 *Victoria v Commonwealth (Federal Roads Case)* (1926) 38 CLR 399; *Victoria v Commonwealth (Uniform Tax Case (No 2))* (1957) 99 CLR 575 at 606; [1957] ALR 761; (1957) 31 ALJ 369; 11 ATD 317 per Dixon CJ; *Victoria v Commonwealth (Uniform Tax Case (No 2))* (1957) 99 CLR 575 at 630 per Williams J, at 656 per Fullagar J; [1957] ALR 761; (1957) 31 ALJ 369; 11 ATD 317.

21 Note however that a term or condition may not restrict the free exercise of religion or require a State to breach the law.

Commonwealth use of prescriptive funding

- 8.29 In 2007, the states 'reacted furiously to the federal government tying university funding to the use of Australian workplace agreements ...'.²² Under the new *Intergovernmental Agreement on Federal Financial Relations (08-09)* the Commonwealth has moved away from prescriptive terms and conditions to sectoral funding with agreed objectives and performance outputs.²³ It was against the background of increasingly prescriptive tied grants that the Government has launched its new policy of cooperative federalism.
- 8.30 Some commentators suggest, however, that while this has the appearance of respecting greater State independence, in fact, negotiated targets and outcomes will be every bit as prescriptive in achieving agreed national goals. Some bilateral agreements, for example, in vocational education and training, include very specific targets. Pay equity could be incorporated as a mutually agreed objective and become a performance measure with future incentive payments dependent on achieving certain pay equity outcomes. The feasibility and efficacy of this option require further investigation and discussion.
- 8.31 Fitting a pay equity requirement into such a complex set of vertical and horizontal relationships involving a plethora of parties raises a range of potential difficulties. The direct or ultimate recipients of Commonwealth funds are likely to be a wide range of legal entities being both employers and conduits for funds to other organisations. State governments and local councils are employers and grantors of funds to private and not for profit entities that deliver goods and services and perform public functions. The mechanisms by which this approach could be implemented would require consultation on a number of matters:
- How would a legally binding pay equity obligation under a grant agreement intersect with the binding obligations of employers (public and private) under existing federal and state industrial relations laws?
 - Would specific pay rates be a term of subsequent state funding agreements?
 - How would states report on progress? Would this involve data reporting obligations for recipients of Commonwealth funds?

22 Stephen Scott and David Crowe, 'Grants shift idea backed', *Australian Financial Review*, 1 August 2007 p. 13.

23 *Public Accountability and Performance Reporting*, Schedule C, Inter-Governmental Agreement on Federal Financial Relations p. C1.

- How would a conflict between a pay equity goal or specific rate of pay and a state based wage/pay equity determination be resolved?
- 8.32 Some recipients of funds under s. 96 grants rely solely on Commonwealth funds while others rely on a mix of state and Commonwealth monies, other private earnings, bequests and donations and grants from domestic and foreign philanthropic bodies. A pay rate that reflects a Commonwealth priority, especially where it forms a small part of revenue, may be opposed by employers and the level at which additional funding would be provided needs further consideration.

Grants versus Referral of Powers

- 8.33 The inclusion of pay equity goals or specific targets would have to be negotiated through COAG and would be relevant across a range of sectors and involve a multitude of actors with ministerial councils potentially taking different views on the priority of pay equity as compared to other sectoral goals.
- 8.34 If the Commonwealth is currently engaging the states in discussion on referral of industrial relations systems, negotiations on pay equity in s.96 grants might add disproportionate complexity to any expected outcomes. South Australia and Victoria have already referred their industrial relations powers to the Commonwealth. Similarly, if the states agreement to uniform or complementary pay equity legislation is a key objective, making the case for specific goals and targets in s.96 grants might appear excessive in addition to being practically difficult to implement.

Further measures

Taxation

- 8.35 The Government is currently undertaking a review of the taxation system which should include issues in relation to the effective marginal tax rates for women on pension and income support benefits that also work or want to work. The Industry Super Network has put a proposal to the government in which a 'worker on \$30 000 – or half of average weekly earnings – would have their retirement savings increased by about \$32 000 in today's dollars.'²⁴ As the majority of Australia's low income earners are

24 Business News, 'Industry super funds demand radical rethink', *Sydney Morning Herald*, 22 September 2009.

women, there are a number of aspects of the current taxation system that could be adjusted to address the pay equity issues.

Superannuation and retirement savings

8.36 One key issue is that many women already in the workforce, generally in low social economic backgrounds, are missing out on the benefits of superannuation.²⁵ Reform of the current superannuation system is an important issue because of the lack of recognition of unpaid caring work.²⁶

... women have significantly less money saved for their retirement – half of all women aged 45 to 59 have \$8000 or less in their superannuation funds, compared to \$31,000 for men.²⁷

8.37 Women's lower superannuation accumulation compared to men is the 'culmination of the many factors of disadvantage'²⁸ such as interruptions to paid employment due to child bearing, child rearing and caring responsibilities:

Women's chances of accumulating good superannuation reserves are often low because they experience more broken work patterns, spend fewer years in full time paid work, earn lower wages and have greater responsibility for unpaid work than their male counterparts.²⁹

8.38 The National Foundation for Australian Women observed:

Outcomes will improve as the compulsory super system matures, however, this does not address the core gender disparity. On the basis of current balances and average income of those aged 35-44 and the assumption of only compulsory super contribution being

25 Ms Marcia Williams, Executive Director, Women's Centre on Health Matters, *Transcript of Evidence*, 28 May 2009, p. 7.

26 Human Rights and Equal Opportunity Commission, 2007 *It's About Time Women, men, work and family Final Paper 2007*, p. xiv.

27 Mr S Kelly, 'Entering Retirement: the Financial Aspects' Paper presented to the *Communicating the Gendered Impact of Economic Policies: The Case of Women's Retirement Incomes*, 12-13 December 2006, Perth cited in Human Rights and Equal Opportunity Commission (2008) *Gender equality: What matters to Australian women and men, the Listening Tour Community Report*, p. 5.

28 Ms Somali Cerise, Senior Policy and Research Officer, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, p. 13.

29 ACT Council of Social Services, *Submission No. 54*, pp. 8-9 citing Professor Rhonda Sharp, Hawke Research Institute, University of South Australia, Media Release *Women Miss out on Retirement Super*, 10 April 2008 and Diane Olsberg, 'Women and Superannuation Still Missing Out', *Journal of Australian Political Economy* 53, p.164.

made, the average payout for a male aged 60 would be \$183 000 for a female it would be only \$93 000 – half that of the male.³⁰

- 8.39 Suggested changes relate to taxation policies, parental leave entitlements, superannuation policies, promotional activities to encourage women to participate in higher paid labour markets, child care strategies and the provision of financial training for older women.
- 8.40 The Australian Maritime Officers Union called for gender analysis of a number of government programs in recognition of the fact that women live longer than men and therefore require more superannuation.³¹ Unions collectively called for a number of changes:
- increasing minimum contributions to a goal of 15%, which can be achieved through bargaining or legislation;
 - reducing the contribution tax including removal of the tax on incomes of less than \$70,000 per annum;
 - restructuring superannuation taxes to provide greater equity;
 - extending the entitlement of Superannuation Guarantee to all workers, irrespective of age or minimum earnings;
 - fully disclosing all fees and charges, together with a ban on entry and exit fees and commissions charged on Superannuation Guarantee contributions; and
 - equal treatment of same sex couples in the allocation of superannuation benefits.³²
- 8.41 The Association of Superannuation Funds of Australia Ltd Research Centre attributed the low levels of superannuation funds for women ‘to a disinclination to sacrifice current spending for future savings, as well as a lack of surplus discretionary income’.³³ Increasing access to superannuation would increase its relevance and serve an educative function for young women about financial security.³⁴ In support of concerns that young women lack the opportunity and knowledge relating to access arrangements that promote financial security, it was observed that salary sacrificing was higher for men than women in all industries except accommodation, cafes and restaurant:

30 National Foundation for Australian Women, *Supplementary Submission No. 94.1*, p. 2.

31 Australian Maritime Officers Union, *Submission No. 74*, p. 9.

32 Australian Council of Trade Unions (ACTU) and Joint State Union Peak Councils, *Submission No. 125*, pp. 35-6.

33 Association of Superannuation Funds of Australia Ltd research Centre, *Women and Superannuation*, 2001 cited in ACT Council of Social Services, *Submission No. 54*, p. 4.

34 Human Rights and Equal Opportunity Commission (2008) *Gender equality: What matters to Australian women and men, the Listening Tour Community Report*, p. 6.

Table 8.1 Salary Sacrifice (2006) EEH

	Female			Male		
	% salary sacrificing	% sacrificed by those sacrificing	% sacrificed all adult employees	% salary sacrificing	% sacrificed by those sacrificing	% sacrificed all adult employees
Mining	20.3	11.8	3.0	32.4	13.3	5.0
Manufacturing	10.6	11.0	1.9	16.2	12.1	2.8
Electricity, Gas & Water	34.5	6.1	2.4	44.2	11.8	6.0
Construction	6.2	13.8	1.2	9.2	15.0	2.1
Wholesale Trade	6.2	10.1	1.0	12.7	13.0	2.5
Retail Trade	2.9	14.4	0.7	5.3	11.8	1.0
Accom. Cafes & Rest.	3.7	16.7	1.0	1.6	7.1	0.2
Transport & Storage	9.6	12.7	1.6	12.1	12.2	2.2
Communication Services	24.7	15.0	5.6	32.1	18.6	8.1
Finance & Insurance	15.4	11.9	2.4	33.1	12.0	5.5
Property & Bus. Services	7.9	22.3	2.8	11.3	18.5	3.1
Govt. Admin & Defence	9.7	12.9	1.6	17.5	13.8	3.2
Education	21.3	13.0	3.8	34.9	14.2	6.8
Health & Comm Services	26.5	24.5	8.7	37.5	20.9	9.9
Cultural & Rec Services	5.6	19.5	2.0	6.3	13.4	1.7
Personal & Other Services	10.2	13.9	2.1	18.4	17.5	4.2
Total All Industries	13.7	17.8	3.6	16.0	14.7	3.5

Source Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender Earning Differentials in Australia: A statistical overview of women's earnings*, unpublished, p. 26

8.42 A review of superannuation law in Australia is required to ensure that women are not disadvantaged. One such review is scheduled three years after the commencement of the *Fair Work Act 2009*.

8.43 A significant gap exists between superannuation payouts to women and men. Women tend to take time out of the workforce and change jobs and careers.³⁵ The CPSU suggested that government fund a public program to provide women with information about financial literacy.³⁶

35 Community and Public Sector Union, *Supplementary Submission No. 13.1*, p. 23.

36 Community and Public Sector Union, *Supplementary Submission No. 13.1*, p. 23.

8.44 Security for Women commented that:

... for women in particular, part time workforce attachment adversely impacts on immediate income level, on their potential career advancement to more senior and better paid positions, and thus impacts on the likelihood of poverty in retirement, due to reduced capacity to make adequate superannuation provisions.³⁷

8.45 The ACT Council of Social Services (ACTCOSS) added that:

Disadvantage in the area of superannuation is particularly acute for women from culturally and linguistically diverse (CALD) backgrounds or Indigenous women. Unemployment rates are higher for women from a CALD background and those in employment are more likely to work in manual, unskilled jobs with fewer entitlements than other occupations. The likelihood of these women receiving any superannuation benefit is very low. Aboriginal women also suffer from underemployment and unemployment and rarely have the opportunity to accumulate superannuation. Initiatives such as the ASIC facts sheet *Super and Us Mob* are positive but we suggest more should be done to ensure Indigenous people and people from a CALD background are not disadvantaged in building retirement savings.³⁸

8.46 The gap between the superannuation levels of men and women largely reflects the pattern of women's working lives but has decreased since the introduction of the superannuation guarantee.³⁹

Superannuation Guarantee

8.47 Section 19 of the *Superannuation Guarantee (Administration) Act 1992* refers to individual superannuation guarantee shortfalls and requires that a charge of nine per cent of total salary or wages be paid by the employer.

8.48 Section 27 in relation to Salary and Wages: General Exclusions states that:

(2) If an employer pays an employee less than \$450 by way of salary or wages in a month, the salary or wages so paid are not to be taken into account for the purpose of making a calculation, in relation to the employer and the employee, under Section 19.

37 Security for Women, *Submission No. 17*, p. 2.

38 ACT Council of Social Services, *Submission No. 54*, p. 10.

39 See discussion Mr Andrew Barr, Policy and Research Manager, Australian Institute of Superannuation Trustees, *Transcript of Evidence*, 24 October 2008, p. 55.

- 8.49 A higher number of women engage in part-time and casual employment than men and the resulting absence of the superannuation guarantee falls disproportionately on women.
- 8.50 ACTCOSS observed that:
- ... women whose total earnings will exceed \$450 per month, and work for several different employers, with no job individually reaching the \$450 benchmark ... [will receive] no superannuation. Similarly, women who are not in the paid workforce or who are registered as unemployed or on government benefits are not entitled to superannuation, and most have no independent retirement savings at all.⁴⁰
- 8.51 The Australian Institute of Superannuation Trustees added that:
- Workers who miss out on compulsory superannuation also miss out on the benefits of default basic death and disability cover as well as the opportunity to increase their level of low-cost insurance.⁴¹
- 8.52 The benefits of the abolition of the \$450 threshold on these women would include the improvement of retirement incomes, access to cost-effective insurance and the opportunity to benefit from the co-contribution scheme; and improvements to the savings behaviour of women.⁴² This will also have an educative value as research has shown that participants in the Co-contribution scheme are 'generally committed to continuing and view their contribution as an essential household expense.'⁴³
- 8.53 In addition employers benefit through the retention of qualified and experienced employees to grow their business as women will be encouraged to remain in the workforce through having the opportunity to qualify for the superannuation guarantee and the opportunity to make voluntary contributions.⁴⁴ The Treasury advised the Committee that:
- In 2007-08, there were 2.25 million jobs which paid less than the daily equivalent of \$450 per month. This covers 18.1 million employee months at an average of \$173 per month.⁴⁵

40 ACT Council of Social Services, *Submission No. 54*, p. 10.

41 The Australian Institute of Superannuation Trustees, *Submission No. 63*, p. 3.

42 The Australian Institute of Superannuation Trustees, *Submission No. 63*, pp. 3-4.

43 The Australian Institute of Superannuation Trustees, *Submission No. 63*, p. 4.

44 The Australian Institute of Superannuation Trustees, *Submission No. 63*, pp. 4-5.

45 Department of Treasury, *Supplementary Submission No. 151.2*, p. 1.

- 8.54 There were 522 000 people in this group who had only one job and of these 53 per cent were paid the superannuation guarantee notwithstanding the available exemption. Further, Treasury advised that in relation to these employees, superannuation was paid on 63 per cent of these wages.⁴⁶
- 8.55 There were also 240 000 employees who worked in several jobs but none paying over \$450 monthly and 1.5 million who had a job that paid more than \$450 per month.⁴⁷
- 8.56 The National Tertiary Education Industry Union (NTEU) commented that:
- It would be more equitable to require payment of the Superannuation Guarantee to all workers, thereby covering those casuals who have very limited hours of work, or who have their hours spread across more than one employer.⁴⁸
- 8.57 The ACTU observed that removing the \$450 a month exemption would have an impact on superannuation retirement incomes.⁴⁹
- Low income earners have as much need as other workers to accumulate retirement savings. In industries where working for several employers is common, such as retail, hospitality and nursing, many employers are excluded from the Superannuation Guarantee system by the fact that the \$450 threshold applies only to a single employer, and not on a combined income level. For employers, the exemption creates a distortion in incentives for employers, because it can involve comparatively high cost of employment of workers marginally above the threshold.⁵⁰
- 8.58 In 2002 the Senate Select Committee on Superannuation recommended the abolition of the \$450 exemption threshold but this was not accepted by the then government. The Senate Committee pointed out that at the time it was introduced 'the \$450 contribution threshold was necessary as a

46 Department of Treasury, *Supplementary Submission No. 151.2*, p. 1.

47 Department of Treasury, *Supplementary Submission No. 151.2*, p. 1.

48 National Tertiary Education Industry Union, submission on the retirement income consultation paper in relation to the Review of Australia's Future Tax System, 16 April 2009, p. 4. See also the submission by the Association of Superannuation Funds of Australia Limited.

49 Ms Catherine Bowtell, Senior Industrial Officer, Australian Council of Trade Unions, *Transcript of Evidence*, 3 April 2009, p. 10.

50 Submissions of Australian Council of Trade Unions, Industry Super Network, Industry Funds Credit Control and Australian Institute of Superannuation Trustees to the 'Review into the Tax Office's administration of the Superannuation Guarantee Charge', July 2009, p. 17.

transitional arrangement' when compulsory employers contribution and the proportion of part time and casual workers were relatively lower.⁵¹

8.59 As workers can now nominate the superannuation fund of their choice, most will already have a super fund.

8.60 In terms of the impact of removing the \$450 threshold:

Modelling by Access Economics shows that the aggregate impact of this measure is small, resulting in a total superannuation assets 2010 – 2041 being 0.326% higher than if no policy change was implemented. However, industry experience suggests it is likely to be quite concentrated, resulting in significant improvements for those individual workers who are most disadvantaged by the current exemption. The modelling supports this intuition, with distributional analysis estimating the adequacy benefit is concentrated among low income earners.⁵²

8.61 Further, the report found that the cost to government would only be 0.003 per cent of GDP in 2041 and the submission recommends a review of the \$450 per month exemption.⁵³

8.62 In May 2009, the Review Panel on Australia's Future Taxation System released a report on strategic issues for the retirement income system.⁵⁴ The Henry Review discussion paper on the strategic issues in relation to retirement income system suggested retaining the \$450 threshold exemption.⁵⁵

8.63 In evidence to the Committee, Treasury commented that companies such as Myer already pay those earning less than \$450 a month the relevant amount of superannuation as a matter of policy 'because it actually makes

51 Senate Select Committee on Superannuation, *Superannuation and standards of living in retirement, Report on the adequacy of the tax arrangements for superannuation and related policy*, December 2002, p. 64.

52 Submissions of Australian Council of Trade Unions, Industry Super Network, Industry Funds Credit Control and Australian Institute of Superannuation Trustees to the 'Review into the Tax Office's administration of the Superannuation Guarantee Charge', July 2009, p. 17.

53 Submissions of Australian Council of Trade Unions, Industry Super Network, Industry Funds Credit Control and Australian Institute of Superannuation Trustees to the 'Review into the Tax Office's administration of the Superannuation Guarantee Charge', July 2009, p. 17.

54 *Australia's future tax system The retirement income system: Report on Strategic Issues May 2009*

55 *Australia's future tax system The retirement income system: Report on Strategic Issues May 2009*, p. 62.

their pay system easier to manage'.⁵⁶ The Australian Institute of Superannuation Trustees commented that:

we are aware in some industries and for some employers it is deemed to be more costly to try to segregate those people who fall under the threshold than it would be to pay nine per cent for everybody ... and the vast majority of people who might fall under that threshold or bubble over that threshold would probably already have an account somewhere in the system. In relation to the administration in the funds, it is more a question of identifying the appropriate account to make that contribution to.⁵⁷

8.64 Treasury argued, however, that the difference between the productivity gap and the rate of real wage increases in the 1990s appears to be the funding of the superannuation guarantee and was of the view that:

although the legal incidence of these payments may be on employers, the economic incidence of the superannuation guarantee is on employees.⁵⁸

8.65 The majority of employers are paying the superannuation guarantee even though not required by law. Employers therefore recognise that it is preferable to do so because it is administratively simpler or it is the fair thing to do or to promote good employee relationship or all of these. It can be assumed that some of the employers not paying the superannuation guarantee do so because it is government policy and are not aware that it may not be business best practice. This is a case where an antiquated government policy no longer reflects current market practices.

8.66 Given the increase in the proportion of part time and casual employees, a large proportion of these are women, and the technical advances in automation of business accounting systems and the extent of community awareness and in line with government's policy of increasing participation in the workforce and decreasing unemployment, workers on lower incomes should receive the same superannuation entitlements as other workers.

56 Mr Philip Gallagher, PSM Manager, Retirement and Intergenerational Modelling Unit, Department of the Treasury, *Transcript of Evidence*, 10 September 2009, p. 5.

57 Mr Andrew Barr, Policy and Research Manager, Australian Institute of Superannuation Trustees, *Transcript of Evidence*, 24 October 2008, p. 57.

58 Mr Philip Gallagher, PSM Manager, Retirement and Intergenerational Modelling Unit, Department of the Treasury, *Transcript of Evidence*, 10 September 2009, p. 4.

Recommendation 37

That the *Superannuation Guarantee (Administration) Act 1992* be amended to remove the exemption from the payment of the 9 per cent charge for employees who earn less than \$450 per month and that the required superannuation contributions be paid for all employees into a designated or approved superannuation fund of their choice

- 8.67 Other categories of employees for whom employers are exempted from paying a superannuation contribution that require consideration are the extension of the superannuation guarantee to maternity leave, those over 70 years of age and those under 18 years who work less than 30 hours per week.
- 8.68 The Australian Institute of Superannuation Trustees strongly supported the view that the paid maternity scheme should have a superannuation component.⁵⁹ The example was given of women who ‘enjoy parity and promotional parity with their male counterparts’, however, Captain Carmen Blanco explained that the requirement to spend long periods at sea limited the career capacity and impacted on other matters such as superannuation:
- Superannuation is built up over an entire career, and currently when a parent is out of the workforce during unpaid maternity or paternity leave a very paltry amount of superannuation is allowed to be paid on their behalf by the working spouse, certainly not equivalent to the amount they would have been able to contribute if they were still in the workforce. If the person is a sole parent then there will be no payments during the time taken for parental leave. Considering the rate of divorce and the longer life expectancy of women, this is certainly going to lead to inequity between the sexes in retirement (Clare 2001), women are currently arriving at retirement with an equivalent of 20 years less savings than men.⁶⁰
- 8.69 In particular, in the light of the move in retirement age to 67 years and the projected increase in the number of people working past retirement, there is a need to review the exemption for those over 70 years of age. Women

59 Mr Andrew Barr, Policy and Research Manager, Australian Institute of Superannuation Trustees, *Transcript of Evidence*, 24 October 2008, p. 55; Australian Institute of Superannuation Trustees, *Submission No. 63*, p. 2.

60 Captain Carmen Blanco, *Submission No. 103*, p. 12.

leave the workforce earlier than men and the availability of the superannuation guarantee may provide further encouragement for women to remain in the labour market longer.

- 8.70 Workers not receiving an employer superannuation contribution, carers and people in the unpaid workforce are not eligible to benefit from the Government's Co-contribution scheme.⁶¹ The Australian Institute of Superannuation Trustees commented that the Co-contribution scheme had been predominantly taken up by older people as young families do not have the disposable income to participate in the program.⁶² The uptake of the Co-contribution scheme by women has increased their superannuation savings but the Australian Human Rights Commission suggested that this be extended to carer payments as well.⁶³

Recommendation 38

That the Government broaden the scope of the Superannuation Co-contribution scheme to include all low income earners.

Portability of superannuation

- 8.71 The Australian Institute of Superannuation Trustees suggested that use of existing superannuation funds for payment of employer contributions would be the most cost effective way to proceed.⁶⁴ Ausfund boasts that it has low fees and charges; efficient administration services; and a history of strong investment returns. Accordingly this or a similar fund may provide a suitable repository for the superannuation funds.

61 Mr Andrew Barr, Policy and Research Manager, Australian Institute of Superannuation Trustees, *Transcript of Evidence*, 24 October 2008, p. 58.

62 Mr Andrew Barr, Policy and Research Manager, Australian Institute of Superannuation Trustees, *Transcript of Evidence*, 24 October 2008, p. 55.

63 Ms Somali Cerise, Senior Policy and Research Officer, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, p. 13.

64 Mr Andrew Barr, Policy and Research Manager, Australian Institute of Superannuation Trustees, *Transcript of Evidence*, 24 October 2008, p. 56.

Recommendation 39

That the Government establish a superannuation fund or modify Ausfund to be an available fund for the receipt of monies on behalf of these employees who earn less than \$450 with any employer to reduce the likelihood of multiple administration costs charged to workers with multiple employers.

Portable long service leave

8.72 Portable long service leave is important for women because of the breaks for family responsibilities. The construction and cleaning industries in the ACT now have portable long service leave. The community services industries in the ACT are also working on this approach.⁶⁵ The Australian Services Union suggested that:

... portable long service leave be introduced to alleviate the loss of this entitlement to women due to the nature of their work, and in particular those sectors funded by the government be encouraged to support and provide portable long service leave.⁶⁶

8.73 Recruitment and Consulting Services Association provided an example of an on-hired employee who has been with an agency for several years and who may have worked on 20 different assignments. RCSA raised the possibility of portable annual, sick and paid carers leave provided it was done efficiently and administered properly:

Is there not an opportunity to start looking at a hybrid between casual and permanent employment whereby, after a period of time, you can start accruing; maybe a smaller percentage, but at least nominate to accrue or trade off part of your casual loading towards accruing annual leave, sick leave and paid carers leave entitlements?⁶⁷

8.74 RCSA speculated that possibly 30 per cent of eligible women would take up the opportunity of portable leave arrangements.⁶⁸ Four per cent of the

65 Ms Roslyn Dundas, Director, ACT Council of Social Service, *Transcript of Evidence*, 28 May 2009, p. 4.

66 Ms Jo Justo, National Industrial Officer, Australian Services Union, *Transcript of Evidence*, 31 March 2009, p. 61.

67 Mr Andrew Cameron, Manager, Policy, Recruitment and Consulting Services Association, *Transcript of Evidence*, 24 October 2008, p. 37.

68 Mr Andrew Cameron, Manager, Policy, Recruitment and Consulting Services Association, *Transcript of Evidence*, 24 October 2008, p. 41.

workforce is on-hire and 15 per cent are independent contractors.⁶⁹ There is a low level of unionisation for on-hire employees because of the diversity of work they undertake in different assignments.⁷⁰

Recommendation 40

That the Government provide a long service leave scheme providing portability of service for workers, together with an equitable application of long service leave contributions by employers in appropriate industries.

Office of Status of Women

- 8.75 The Office of Women has established a Women's Interdepartmental Committee to direct whole of government engagement in the pursuit of gender equality. The following agencies are represented at SES level: Attorney-General's Department; Australian Bureau of Statistics; Australian Public Service Commission; Australian Agency for International Development; Department of Agriculture, Fisheries and Forestry; Department of Defence; Department of Education, Employment and Workplace Relations; Department of Families, Housing, Community Services and Indigenous Affairs and Office for Women; Department of Finance and Deregulation; Department of Foreign Affairs and Trade; Department of Health and Ageing; Department of Human Services; Department of Immigration and Citizenship; Department of Infrastructure, Transport, Regional Development and Local Government; Department of Innovation, Industry, Science and Research; Department of the Prime Minister and Cabinet and The Treasury.
- 8.76 The role of the Women's IDC is to lead whole of government progress and advice on:
- Progress on the Australian government's priorities for gender equality, including advice on barriers to improved outcomes and how they can be addressed.

69 Mr Andrew Cameron, Manager, Policy, Recruitment and Consulting Services Association, *Transcript of Evidence*, 24 October 2008, p. 41.

70 Mr Andrew Cameron, Manager, Policy, Recruitment and Consulting Services Association, *Transcript of Evidence*, 24 October 2008, p. 42.

- Options to improve the extent to which gender issues are taken into account in the development, implementation and evaluation of government policies and programs within portfolios and across government.
- Gender equality outcomes in the Australian Public Service particularly in operations and employment outcomes and how these could be improved.
- Australian Government actions in the context of leading other governments, business and the broader community to improve outcomes for Australian women, and women internationally.
- Other issues as required, from time to time by the Minister for the Status of Women and other Ministers of the Australian Government.
- The effectiveness of this Inter Departmental Committee in achieving its intent, through reports to the Minister for the Status of Women, the Secretary of FaHCSIA, and the Department of the Prime Minister and Cabinet, including an independent assessment of effectiveness and a final report to the Minister by October 2010.⁷¹

8.77 The IDC has 3 working groups

- Economic Security Working Group
- Gender Equality Working Group
- National Plan Working Group

8.78 The whole of government character of the Women's IDC and focus of the Office of Women support its relocation within the Department of Prime Minister and Cabinet. While the current location in the Department of Family and Housing, Community Services and Indigenous Affairs provides an important link with the services provided by that Department, this change would provide greater assurance of a whole of government approach.

8.79 Given the importance of the key policies over a number of portfolios, moving the Office of Women to the Department of Prime Minister and Cabinet would facilitate a whole of government approach.

8.80 The Australian Institute of Management Victoria and Tasmania added that having the increased profile of the Prime Minister would demonstrate the importance of this issue.⁷²

71 Office of Women, *Overview: Women's Interdepartmental Committee*, Exhibit 101.

72 Ms Susan Heron, Chief Executive Officer, Australian Institute of Management, Victoria and Tasmania, *Transcript of Evidence*, 4 December 2008, p. 4.

- 8.81 The Office for Work and Family is situated in the Department of Prime Minister and Cabinet and has announced a \$12 million program for small businesses to implement approaches that assist employees balance work and family obligations.⁷³ The co-location of the two offices would provide additional benefits in coordination of policy initiatives.

Recommendation 41

That the Office for Women be located within the Department of Prime Minister and Cabinet.

- 8.82 The Office for Women currently holds gender Pay Equity Roundtables which are attended by representatives from academia, National Women's Secretariats, state and federal government departments and unions.⁷⁴ The Committee commends the Office for Women on this initiative and would like to see these continue within the whole of government context within the Department of Prime Minister and Cabinet.
- 8.83 The regulatory impact statements accompanying all relevant Cabinet submissions should contain comment on the impact of the proposal on pay equity as part of the broader social impact assessment. Locating the Office of Women within the Department of Prime Minister and Cabinet would ensure that it is central to the development of key policy initiatives.

Recommendation 42

That all relevant Cabinet submissions be accompanied by an analysis of the potential impact of the proposal on pay equity in Australia.

Ministerial report to Parliament

- 8.84 The Minister for Status of Women should provide, in addition to the current report on *Women in Australia*, an annual statement to the

73 Ms Sandra Parker, Group Manager, Workplace Relations Policy Group, Department of Education, Employment and Workplace Relations, *Transcript of Evidence*, 18 September 2008, p. 4.

74 Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Submission No. 112*, p. 15.

Parliament providing a progress report on pay equity and other issues relevant to improving women's economic and financial independence. The statement should be made on or as near as possible to women's pay equity day to emphasise the importance of this to the wider community.

Recommendation 43

That the Minister for the Status of Women provide an annual statement to Parliament on Australia's progress in improving women's economic and financial independence which includes an analysis of the pay equity situation in Australia.

APS departments and agencies

- 8.85 Under the proposed arrangements for a Pay Equity Unit within Fair Work Australia, government agencies will be required to undertake pay equity audits and develop a pay equity strategy. Therefore, the incorporation of a brief report on pay equity strategies and outcomes in annual reports to Parliament will provide additional accountability. This will enable Senate and House of Representatives committees to initiate inquiries into any matters arising.

Recommendation 44

That the Department of Prime Minister and Cabinet amend the 'Requirements for Annual Reports for Departments, Executive Agencies and FMA ACT bodies', Section 12 (3) Management of Human Resources (b), the word 'gender' to read 'gender including pay equity issues' for the preparation of annual report to Parliament.

- 8.86 Further, the Australian Public Service Commission should provide information on pay equity issues in its State of the Service reports. Agencies now operate under enterprise bargaining and individual agreement making arrangements with no central underpinning classification framework. This has resulted in disparity within organisations and between organisations on the basis of gender.

Recommendation 45

That the Australian Public Service Commission be required to report on gender pay gap in the Australian Public Service in the annual State of the Service reports.

- 8.87 Wage gains on average in the public sector have been greater than in the private sector this decade.⁷⁵ Women comprise 57 per cent of Australian Public Service (APS) employees.⁷⁶ The median remuneration for women is lower than that for men at all levels except the APS4 level and attributed this to longer median lengths of service for males.⁷⁷ The longer service of males was attributed to slower promotion rates, the recent recruitment of a greater number of women and the interruption of women's service because of family commitments.⁷⁸
- 8.88 In the Australian Public Service wages are set by collective agreements and salaries are linked to classifications which contain a number of increment points and remuneration levels are dependent on the 'size and nature and the labour market in which the various agencies operate and their funding arrangements.'⁷⁹
- 8.89 Women in the APS are employed in the lowest-paying agencies, and in the lower levels of those agencies which the CPSU attributed to the underevaluation of the work in these agencies and ongoing fiscal constraints.⁸⁰ The CPSU believed this reflect the way government values work and not about productivity.⁸¹

75 Work and Family Policy Roundtable, *Submission No. 143*, p. 6.

76 Mr Stephen Jones, National Secretary, Community and Public Sector Union, *Transcript of Evidence*, 26 September 2008, p. 67.

77 Ms Nicole Pietrucha, Group Manager, Better Practice, Australian public Service Commission, *Transcript of Evidence*, 16 October 2008, p. 1; Australian Public Service Commission, *Submission No. 102*, p. 2. At the APS4 level there was no difference in length of service between males and females.

78 Australian Public Service Commission, *Submission No. 102*, pp. 3-4

79 Ms Nicole Pietrucha, Group Manager, Better Practice, Australian public Service Commission, *Transcript of Evidence*, 16 October 2008, p. 2.

80 Mr Stephen Jones, National Secretary, Community and Public Sector Union, *Transcript of Evidence*, 26 September 2008, pp. 66, 69.

81 Mr Stephen Jones, National Secretary, Community and Public Sector Union, *Transcript of Evidence*, 26 September 2008, p. 71.

- 8.90 The CPSU argued that there are substantial costs involved in the development of separate agency collective agreements and the return to a single pay structure has the potential to address a number of pay equity issues within the public sector as well as potential savings.⁸² The development of a framework to promote collective bargaining, equality, participation, flexibility and mobility' could start to address some of the pay inequity evident in the APS.⁸³
- 8.91 The 3 September 2009, the Prime Minister, the Hon Kevin Rudd MP, announced an Advisory Group on Reform Government Administration is considering the performance of the public services including the efficiency in all aspects of government operations. According the Committee recommends:

Recommendation 46

That the government incorporate in the current review of the Australian Public Service the adequacy of the current collective agreement wage setting processes to meet pay equity principles required under Australia's international obligations.

Gender equality scheme

- 8.92 Under the model operating in the United Kingdom, all public authorities are required:
- to prepare and publish a gender equality scheme;
 - to consider the need to include objectives to address the causes of any gender pay gap;
 - to gather and use information on how the public authority's policies and practices affect gender equality in the workforce and in the delivery of services;
 - to consult stakeholders in order to determine gender equality objectives;
 - to assess the impact of the authority's current and proposed policies and practices;

82 Mr Stephen Jones, National Secretary, Community and Public Sector Union, *Transcript of Evidence*, 26 September 2008, p. 77.

83 Community and Public Sector Union, *Submission No. 13*, p. 1.

- to implement the actions set out in the authority's scheme within 3 years, unless it is unreasonable or impracticable to do so; and
- to report against the scheme every year and review every three years.⁸⁴

8.93 It is appropriate that in addition to the public sector agencies attention to pay equity principles in relation to employees that this consideration should also extend to the implementation of government policies and programs. Accordingly the Committee recommends:

Recommendation 47

That all government agencies and authorities be required to implement a gender equality scheme and to report on policies and practices in the delivery of services.

Code of Practice

8.94 The United Kingdom has an *Equal Pay Act 1979* which includes an objective of pay equity and the *Sex Discrimination Act 1975* which relates to equal remuneration.⁸⁵ In 1997, a Code of Practice on Equal Pay came into force which provides guidance on the application of pay equity but has limited compliance due to the voluntary nature.⁸⁶

In the UK codes of practice have also been used to good effect. The UK Equal Opportunities Commission has developed a *Code of Practice on Equal Pay* for employers. That Code sets out the practical obligations of employers in respect of the laws of the European Union and the United Kingdom.⁸⁷

8.95 Code of Practice on Equal Pay serves as a guide for the application of pay equity, based on a series of practices derived from court rulings. The Code outlines the five stages to be followed in order to carry out a pay review on a voluntary basis:

84 Equal Opportunity Commission of Western Australia, *Submission No. 131*, p. 15.

85 Department of Education, Employment Workplace Relations, *Submission No. 58*, p. 27.

86 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 28.

87 Australian Council of Trade Unions (ACTU) and Joint State Union Peak Councils, *Submission No. 125*, p. 39.

- (i) decision on the scope of the review and identify the required data. The employer may select which jobs are to be compared and which are not. The employer may decide to include or exclude employee representatives;
 - (ii) determination of equal jobs and those of equal value. The employer is free to choose the method s/he considers fit, and that may or may not rely on a job evaluation method;
 - (iii) gathering of data on wages in order to identify the pay gaps. It is specified that only significant pay gaps should be considered;
 - (iv) identification of the objective causes of any significant pay gap; and
 - (v) formulation of a plan of action and follow-up.⁸⁸
- 8.96 In 2006, an International Labour Organisation Working Paper criticised the British model on the basis that the model ‘focuses more on the establishment of non-discriminatory pay practices than on the elimination of the pay gaps themselves; more on achieving equal opportunities rather than equal results’.⁸⁹
- 8.97 A Code of Practice is not necessary in the Australian context in addition to the measures already recommended in this report.

88 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 28; Equal Opportunities Commission 2003, *Code of Practice on Equal Pay*, London

89 Chicha, M T, 2006, *A Comparative analysis of promoting pay equity: models and impacts*, International Labour Office, Geneva cited in DEEWR, *Submission No. 58*, p. 229.

The lack of adequate data on earnings and conditions of employment contributes to poor understanding among the wider community about the nature and extent of gender pay inequity in Australia.¹

Data collection and research

Current data

9.1 The International Labour Organisation Committee of Experts responsible for reporting on the Convention Concerning Discrimination in Respect to Employment and Occupation (ILO Convention 111) noted that, from an international perspective, the difficulties in the application of equal pay for equal work stem from:

- insufficient data and research; and
- inadequate financial resources for collection of data and instituting appropriate job evaluation schemes.²

9.2 Similar issues continue on a national scale, where the Committee on the Elimination of Discrimination Against Women (CEDAW) commented that:

The Committee regrets that the report [*Australia's Combined Fourth and Fifth Reports to the United Nations on CEDAW, June 2003*] neither provides sufficient statistical data, disaggregated by sex and ethnicity on the practical realization of equality between women and men in all areas covered by the Convention nor

1 Work and Family Policy Roundtable, *Submission No. 143*, p. 8.

2 Group Training Australia Ltd, *Submission No. 45*, p. 5.

information on the impact and results achieved of legal and policy measures taken. It also regrets the absence of sufficient information and data on women with disabilities.³

Equal Opportunity for Women in the Workplace Agency

- 9.3 The Equal Opportunity for Women in the Workplace Agency (EOWA) is a statutory authority of the Australian Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs.⁴
- 9.4 EOWA's role is to administer the *Equal Opportunity for Women in the Workplace Act 1999* (Commonwealth) and through education, assist organisations to achieve equal opportunity for women. EOWA works with employers to improve equal opportunity outcomes for women in the workplace by:
- delivering practical solutions;
 - building strategic partnerships; and
 - leading public debate to increase the rate of change.⁵

EOWA research and resources

- 9.5 EOWA collects data and undertakes research each year to monitor the issues facing women in the workplace. EOWA research and data relevant to the inquiry:
- *EOWA Census of Women in Leadership and Top Earner Report*;
 - ⇒ Begun in 2002, this report analyses the numbers and positions of women and men in corporate leadership roles in the top 200 companies on the Australian Stock Exchange.⁶
 - ⇒ EOWA has conducted the census and associated research producing reports in 2002, 2003, 2004, 2006 and 2008.⁷ Most recently, EOWA released *Pay, Power and Position: Beyond the 2008 EOWA Australian*

3 Committee on the Elimination of Discrimination against Women, 2006, *Concluding comments of the Committee on the Elimination of Discrimination against Women*, United Nations Convention on the Elimination of All Forms of Discrimination, p. 3.

4 Equal Opportunity for Women in the Workplace Agency, *Submission No. 113*, p. 5.

5 Equal Opportunity for Women in the Workplace Agency 2009, *Equal Opportunity for Women in the Workplace Agency*, Sydney, viewed 9 September 2009, <<http://www.eowa.gov.au/>>.

6 Equal Opportunity for Women in the Workplace Agency, *Submission No. 113*, p. 14.

7 Equal Opportunity for Women in the Workplace Agency 2009, *Equal Opportunity for Women in the Workplace Agency*, Sydney, viewed 24 September 2009, <http://www.eowa.gov.au/Australian_Women_In_Leadership_Census.asp>.

Census of Women in Leadership, which adds to the Census of Women's Leadership findings.

- *Generation F: Attract, Engage, Retain*;
 - ⇒ In April 2008, EOWA released this report that analysed the findings from a series of focus groups and an online survey of more than 1600 men and women across Australia. The report revealed that many employers are not providing workplaces that enable women (aged between 16 – 65 years of age) to fully participate in the Australian workforce, for reasons such as lack of workplace flexibility towards work/life balance, and workplaces not providing clear career development.⁸
- *EOWA Annual Survey*;
 - ⇒ Based on an annual survey of report contacts in EOWA reporting organisations (more than 2,300 organisations provided annual compliance report in 2008), this survey collects data on the provision and prevalence of specific employer initiatives, as well as opinion data on the emerging issues for employers in maximising outcomes for both female employees and the business.⁹ The most recent report is titled *EOWA Survey on Paid Maternity Leave, Sex-based Harassment Initiatives and the Gender Pay Gap*.¹⁰
- *Auspoll Research Consulting Survey on Australians' Attitude to Pay Equity*;
 - ⇒ In partnership with Diversity Council Australia, EOWA commissioned quantitative surveys conducted in September 2008. Two similar surveys were conducted, a general population online interviews of approximately 1200 people, and an online survey of 2,213 Workplace Training Advisory Australia business professionals. The purpose of the surveys was to identify the level of community awareness and understanding of the pay gap in Australia, and whether there is a need to educate the public on the complexities of gender pay inequity.¹¹

8 Equal Opportunity for Women in the Workplace Agency, *Generation F: Attract, Engage, Retain – Australian workplaces not positioned for productivity: EOWA research*, Sydney, 29 April 2008.

9 Equal Opportunity for Women in the Workplace Agency, *EOWA Survey on Paid Maternity Leave, Sex-based Harassment Initiatives and the Gender Pay Gap*, Canberra, 2009, p. 3.

10 For report see:

<http://www.eowa.gov.au/Information_Centres/Media_Centre/Media_Releases/2009_Alcoa_Survey.asp>.

11 Equal Opportunity for Women in the Workplace Agency, *Submission No. 113*, pp. 19-20.

Compliance reporting

9.6 Currently, under the *Equal Opportunity for Women in the Workplace Act 1999* (EOWW Act) businesses of over 100 employees¹² are required to report to EOWA annually. EOWA explained that,

By legislation they [relevant organisations] are required to have a program in place and tell the government about it. They are required to analyse issues around seven employment matters being those areas where women traditionally are touched by discrimination: recruitment and promotion, work organisation, pregnancy, sexual harassment, training and development.¹³

9.7 As per Section 19 of the EOWW Act, a non-compliant organisation is one that:

- fails to lodge a public report or confidential report as required; or
- fails to provide further information in accordance with a notice given under section 18.¹⁴

9.8 As a consequence, and in accordance with Section 19 of the EOWW Act, EOWA is required to name non-compliant organisations in a list presented annually before parliament. There is also a contract compliance policy, which renders non-complaint organisations ineligible to tender for government contracts and some industry assistance. Once a non-compliant organisation submits a compliant report their name is removed from the list.¹⁵

9.9 Annual compliance reporting provides information and data that,

...enables EOWA to undertake research for the purpose of measuring progress towards, and promoting, equal opportunity for women in the workplace.¹⁶

Australian Bureau of Statistics

9.10 The Australian Bureau of Statistics (ABS) collects a wide range of information on the structure and operations of the labour market, and the

12 Definition for organisations covered by the legislation can be found Section 3.1 of the *Equal Opportunity for Women in the Workplace Act 1999*.

13 Ms. Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2009, p. 19.

14 *Equal Opportunity for Women in the Workplace Act 1999* (Cwlth), Section 19, (1)(a-b).

15 Equal Opportunity for Women in the Workplace Agency, *Submission No. 113*, pp. 9-10.

16 Equal Opportunity for Women in the Workplace Agency, *EOWA Survey on Paid Maternity Leave, Sex-based Harassment Initiatives and the Gender Pay Gap*, Canberra, 2009, p. 3.

links between work, family and community life. The ABS has a number of data sources on employee earnings which enable the measurement and analysis of pay equity.¹⁷

9.11 ABS surveys collect information from businesses (business surveys) or from individuals in a household (household surveys). The main differences between the two types of survey methodologies are as follows:

■ Business Surveys:

- ⇒ more robust earnings estimates as the data are obtained from employers' payrolls;
- ⇒ the ability to collect the components of earnings separately (i.e. ordinary time and overtime earnings);
- ⇒ better, more consistent, industry and sector estimates - industry coding is based on the main activities of the business (as maintained on the ABS Business Register);
- ⇒ little or no demographic information about employees.¹⁸

■ Household Surveys:

- ⇒ less robust earnings estimates as they are reliant on respondents accurate recall of their (pre-tax) earnings. In addition, for some household surveys respondents report on behalf of others in the households and this can affect the quality of data reported;
- ⇒ a wide range of socio-demographic and employment characteristics.¹⁹

9.12 The ABS suggested three main sources of data to monitor pay equity:

- survey of *Average Weekly Earnings* (AWE) - (cat no. 6302.0);
 - ⇒ AWE provides a quarterly business survey measure of the level of earnings, and represents the ABS headline measure of average earnings. The sample size is approximately 5,500 employers.²⁰
- survey of *Employee Earnings and Hours* (EEH) - (cat. no. 6306.0);
 - ⇒ EEH provides two-yearly business survey statistics on the composition and distribution of employee earnings, the hours they

17 Australian Bureau of Statistics, *Submission No. 132*, p. 1.

18 Australian Bureau of Statistics, *Submission No. 132*, p. 2.

19 Australian Bureau of Statistics, *Submission No. 132*, p. 2.

20 Australian Bureau of Statistics, *Submission No. 132*, p. 4.

are paid for, and the methods used to set their pay. The sample size is approximately 9,000 employers and 57,000 employees.²¹

- survey of *Employee Earnings, Benefits and Trade Union Membership* (EEBTUM) – (cat. no.6310.0);
 - ⇒ EEBTUM collects weekly earnings data together with a range of socio-demographic information, including: sex; age; marital status; relationship in household; geographic region; school attendance; country of birth and year of arrival in Australia.
 - ⇒ EEBTUM is a household survey conducted annually (in August) as a supplement to the monthly Labour Force Survey (LFS). The survey has a sample size of approximately 30,000 employees.²²
- Labour Force Survey (LFS)
 - ⇒ LFS is a monthly survey of approximately 24,000 dwellings across Australia, which provides estimates of labour market activity of Australia's resident civilian population aged 15 years and over. Estimates are available by State/Territory, capital city/balance of state, and sub-state regions.²³

Household Income and Labour Dynamics in Australia

- 9.13 The Household Income and Labour Dynamics in Australia (HILDA) Survey is a household-based panel study which began in 2001. The HILDA survey is funded by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), and responsibility for the design and management of the survey lies with the Melbourne Institute of Applied Economic and Social Research at the University of Melbourne.²⁴
- 9.14 FaHCSIA stated that the primary objective of the HILDA survey is to support research questions falling within three broad areas:
- income dynamics - with a particular focus on how households respond to policy changes aimed at improving financial incentives, and interactions between changes in family status and poverty;

21 Australian Bureau of Statistics, *Submission No. 132*, pp. 5-6.

22 Australian Bureau of Statistics, *Submission No. 132*, p. 9.

23 Australian Bureau of Statistics, *Submission No. 132*, p. 31.

24 Melbourne Institute of Applied Economics, University of Melbourne, Household Income and Labour Dynamics in Australia Survey, viewed 2 July 2009, <<http://www.melbourneinstitute.com/hilda/>>.

- labour market dynamics - with a focus on low-to-middle income households, female participation, and work to retirement transitions; and
 - family dynamics - focusing on family formation, well-being and separation, along with post-separation arrangements for children and links between income support and family formation and breakdown.²⁵
- 9.15 The range of topics covered in HILDA extends well beyond the three aforementioned identified areas to include such things as life satisfaction, health outcomes, neighbourhood characteristics, time usage and work-family balance.
- 9.16 According to the 2006 WESKI report, the main advantages of the HILDA survey, when monitoring developments of new or changing workplace regulations, are that:
- the survey is conducted annually, which means that it is available more regularly than the some of the two yearly ABS survey reports; and
 - as a longitudinal data set, the same respondents are surveyed in each wave and it is possible to undertake analysis examining variables for the same individuals through time.²⁶

Workplace Industrial Relations Surveys

- 9.17 The Australian Workplace Industrial Relations Survey (AWIRS) was a large national scale survey of industrial relations. Two AWIRS have been conducted, the first in 1990 by the then Department of Industrial Relations, and the second in 1995 by the then Department of Industrial Relations which later became the Department of Employment and Small Business (DESB).²⁷ AWIRS has not been undertaken since 1995. This type of national survey continues to be conducted in other countries such as the British Workplace Employment Relations Survey (WERS) which was most recently conducted in 2004.²⁸

25 Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Submission No. 112*, p. 16.

26 WISER 2006 *Towards a Database of Women's Employment Status Key Indicators*, p. 49.

27 Department of Workplace Relations & Small Business, 1997, *Changes at Work: The 1995 Australian Workplace Industrial Relations Survey, A Summary of the major findings*, p. 1.

28 Work and Family Policy Roundtable, *Submission No. 143*, p. 10.

Women's Interdepartmental Committee

9.18 In September 2008, when the Committee first spoke with government departments and agencies regarding interdepartmental communication on pay equity, there was little evidence of a formal mechanism for coordination of monitoring pay equity issues.²⁹

9.19 When DEEWR, EOWA and FaHCSIA returned in August 2009, progress had been made with regard to interdepartmental communication and coordination.

The most significant development since the committee last heard from us [FaHCSIA] is the formation of the women's IDC working group on economic security. A specific part of its responsibility is to bring together the key agencies across the federal government with responsibility for pay equity.³⁰

9.20 A vital part of data collection is information sharing. As discussed in chapter seven a Women's Interdepartmental Committee (IDC) was established in February 2009,³¹ is co-chaired by DEEWR and FaHCSIA,³² and has senior-executive representation from a range of government departments and agencies.³³

9.21 In a speech given at the 2009 Australian Women's Leadership Symposium, the Minister for the Status of Women commented that:

Gender equality is best advanced through whole-of-government engagement, otherwise known as gender mainstreaming or gender sensitive policy making. The Government has created a Women's Interdepartmental Committee (IDC) so that departments do a better job of talking to one another regarding how their policies are effecting and will affect women.³⁴

29 See *Transcript of Evidence*, 25 September 2008, p. 6.

30 Ms Julia Burns, Executive Director, Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Transcript of Evidence*, 20 August 2009, p. 6.

31 Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Exhibit 101*, p. 1.

32 Ms Julia Burns, Executive Director, Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Transcript of Evidence*, 20 August 2009, p. 6.

33 Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Exhibit No.101*, p. 1.

34 Plibersek, T (Minister for the Status of Women), 2009, Australian Women's Leadership Symposium, Canberra, 17 June.

Australian Public Service surveys

- 9.22 DEEWR reported three regular Australian Public Service (APS) surveys provide data on the gender wage gap and pay differences between APS departments:
- *APS Remuneration Survey* conducted annually for DEEWR by Mercer Consulting - The Mercer survey provides an overview of SES and Non SES remuneration trends across the APS, state agencies and the wider market. The survey does not produce any gender specific data.
 - *The Commonwealth Remuneration Guide* conducted annually by HBA Consulting - HBA's Commonwealth Remuneration Guide provides information on salary rates delivered through certified and collective agreements across Commonwealth agencies. The survey does not produce any gender specific data.
 - *State of the Service* reports produced by the APSC - Data is available by gender but the survey is attitudinal and does not cover remuneration.³⁵

Australian Public Service Commission

9.23 The Australian Public Service Commission (APSC) is an agency within the Department of the Prime Minister and Cabinet. The Commission supports two statutory office holders, the Public Service Commissioner – who is also agency head – and the Merit Protection Commissioner. The Commission's mission is to support the Australian Public Service (APS) and the statutory responsibilities that support that mission are outlined in the *Public Service Act 1999*.³⁶

9.24 APSC stated that it,

...maintains the APS Employment Database (APSED) which has recorded a variety of human resource details of individual APS employees for over 40 years. The information collected includes remuneration (defined as base salary plus allowances) for each APS employee. Remuneration data can be broken down by many variables including gender, agency, classification, engagement from outside the APS, and length of service.³⁷

35 Department of Education, Employment and Workplace Relations, *Supplementary Submission No. 58.1*, p. 1.

36 Australian Public Service Commission 2009, Australian Public Service Commission, Canberra, viewed 25 September 2009, <<http://www.apsc.gov.au/annualreport/0708/partoneoverview.htm>>.

37 Australian Public Service Commission, *Submission No. 102*, p. 1.

9.25 Whilst the data contained in APSED allows for some analysis of pay equity issues within the APS, according to APSC some of the limitations of APSED are:

- allowances cannot be separately identified from base salary;
- it cannot be broken down by collective or individual agreements (such as Australian Workplace Agreements (AWAs) or determinations made under section 24(1) of the Act);
- and it does not include key non-monetary benefits such as cars, superannuation or performance bonuses.³⁸

Issues and deficiencies in data collection

9.26 Stakeholders claimed that much of the current data used to monitor employment changes that may impact on pay equity issues is inadequate. Where relevant data is collected, it is not collected consistently or regularly enough and not sufficiently comparable to prove useful in the analysis and monitoring of any changes in pay inequity, or changes in issues affecting pay equity.

9.27 For instance the Diversity Council of Australia noted:

The lack of a dedicated body funded to analyse data and monitor pay equity progress over time has compromised Australia's capacity to readily and easily understand how we are tracking, including how changing federal and state government policy and the associated changing employment relations landscape is impacting upon the gender pay gap.³⁹

Women's employment status key indicators

9.28 In September 2006, the Australian Human Rights Commission⁴⁰ partnered with the Women's Electoral Lobby and the National Foundation for Australian Women to fund Women in Social and Economic Research (WiSER)⁴¹ to produce a report examining the capacity of existing data collections to monitor women's pay and other employment conditions

38 Australian Public Service Commission, *Submission No. 102*, p. 1.

39 Diversity Council of Australia, *Submission No. 110*, p. 15.

40 Then the Human Rights and Equal Opportunity Commission

41 is an inter-disciplinary research program spanning the Curtin Business School and the Division of Humanities of the Curtin University

under the new regulatory framework established by the Workplace Relations Amendment (Work Choices) Act 2005 (Work Choices).⁴² As a result, WiSER prepared and released its report, *Women's pay and conditions in an era of changing workplace regulations: Towards a "Women's Employment Status Key Indicators" (WESKI) database*.

- 9.29 The WESKI report called for 'a comprehensive research program systematically examining the wages and conditions in key industries and occupations in which minimum wage women workers are employed'.⁴³ WESKI recommended that a program be established for:

... monitoring and research with respect to the federal minimum wage and its impact on particularly vulnerable groups of women employees with limited bargaining power, especially women with a disability, young women, women from CALD [culturally and linguistically diverse] and Indigenous backgrounds, and women working in more less protected sectors of the labour market such as outworkers.⁴⁴

- 9.30 The AHRC endorsed the WESKI report and recommended that the ABS collect and publish regular disaggregated data in areas identified by the WESKI report.⁴⁵

- 9.31 The Australian Human Rights Commission referred to:

...the need to design new data collections in line with new regulatory frameworks and the need for detailed, gender disaggregated data to inform gender sensitive policy development.⁴⁶

- 9.32 The Queensland Government noted:

...the need for a national response to the WESKI report findings. It is crucial that new data collections are developed and currently existing collections modified to provide capacity to accurately monitor women's wages and other employment related conditions.⁴⁷

- 9.33 The Work and Family Policy Roundtable supported the recommendations of the WESKI report, particularly,

42 Australian Human Rights Commission, *Submission No. 108*, p. 9.

43 WiSER 2006 *Towards a Database of Women's Employment Status Key Indicators*, p. xviii.

44 WiSER 2006 *Towards a Database of Women's Employment Status Key Indicators*, pp. xviii – xix.

45 Australian Human Rights Commission, *Submission No. 108*, recommendation 12 (1), p. 23.

46 Australian Human Rights Commission, *Submission No. 108*, p. 22.

47 Queensland Government, *Submission No. 135*, p. 10.

- the re-establishment of a regular Australian Workplace Industrial Relations Survey that collects data from both management and employees at national level;
- the need for accurate data on hourly earnings for part-time and casual employees in ABS survey data; and
- the inclusion of more detailed information relevant to gender pay equity in HILDA.⁴⁸

Committee Comment

- 9.34 The WESKI report was published in the environment of a previous industrial relations regime but remains relevant and received wide support from a number of organisations and agencies.
- 9.35 Some of the following recommendations in this chapter refer and are drawn from recommendations of the WESKI report. Further consideration of the findings of the WESKI report need to be considered by the proposed Pay Equity Unit or an appropriate government organisation.

Recommendation 48

That the Pay Equity Unit consider and respond to the findings and recommendations of the Women in Social and Economic Research 2006 report *Women's pay and conditions in an era of changing workplace regulations: Towards a "Women's Employment Status Key Indicators" (WESKI) database.*

Equal Opportunity for Women in the Workplace Agency

Compliance Reporting to EOWA

- 9.36 Stakeholders raised a series of issues in relation to EOWA's ability to extract reliable data from organisations required to report. ACTU stated that EOWA,
- ... is not a particularly well resourced organisation, and the sanction is being named in parliament... If you read the reports that are submitted by firms – and they are available on the web – quite often it is the same report now that is being submitted every

48 Work and Family Policy Roundtable, *Submission No. 143*, p. 10.

year – year in, year out. That is a waste of everybody’s time, frankly.⁴⁹

- 9.37 A common criticism of the EOWW Act, and more specifically the requirement of organisations of over 100 employees to report to EOWA, has been that the reporting process is not rigorous enough, and that businesses of fewer than 100 employees escape having to report to EOWA at all.

Reports to the Agency must be more rigorous and provide more and better information on wages, employment structures, access to leave, training, forms of employment contracts and occupational arrangements. This information will provide useful data in assessing effects, causes and drivers of gender inequality in pay.⁵⁰

- 9.38 EOWA effectively referred to the voluntary nature of the reporting regime,

Remuneration and Pay Equity issues fall within the EOWW Act under Employment Matter 5 (Conditions of Service). The workplace profile may include pay data; however this is not mandatory under the current Compliance Guidelines.⁵¹

- 9.39 EOWA stated that whilst pay data, which looks at average salary data by occupational category, is not mandatory under the compliance reporting requirements, over 90 per cent of businesses supply in this format.⁵²

- 9.40 The issue of self-identification of organisations of more than 100 employees was also raised. EOWA stated that,

There are businesses with over 100 employees in the private sector that we do not know about. They are meant to self-identify to the agency... [They] should be reporting but are not. Trying to find them is very, very hard.⁵³

- 9.41 Whilst EOWA resources, through its website, are available to business of all sizes, there remains a concern that pay equity issues may still be left unidentified in businesses of fewer than 100 employees that are not required to report under the EOWW Act.

49 Ms Catherine Bowtell, Senior Industrial Officer, Australian Council of Trade Unions, *Transcript of Evidence*, 3 April 2009, p. 15.

50 National Pay Equity Coalition and Women’s Electoral Lobby, *Submission No. 118*, p. 6.

51 Equal Opportunity for Women in the Workplace Agency, *Submission No. 113*, p. 11.

52 Ms Mairi Steele, Acting Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 20 August 2009, p. 2.

53 Ms Mairi Steele, Acting Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 20 August 2009, pp. 15-16.

- 9.42 The Diversity Council of Australia (DCA) reported that,
- DCA members have indicated that, in particular, leading edge industry-specific benchmarking information on pay equity gap would greatly assist them progress the pay equity agenda within their own workplaces through providing a meaningful point of comparison and an incentive for their organisation to aspire to industry best practice.⁵⁴

Committee Comment

- 9.43 Regular reporting from organisations and businesses is essential to not only ensuring compliance with responsibilities under legislation, but regular reporting can show trends over time and across industries.
- 9.44 Research and data collection functions and responsibilities for the proposed Pay Equity Unit discussed in chapter seven would build on and expand information gathered by EOWA.
- 9.45 In seeking to address pay equity, public service departments, agencies and authorities should lead by example and be required to complete pay equity audits regardless of their size. The Australian Government has a responsibility and capability in demonstrating best practice reporting of pay and gender equity issues in the workplace.

Australian Bureau of Statistics

- 9.46 The Western Australian Department of Consumer Protection and Government Employment identified specific data inadequacies within current data sets to enable accurate analysis of gender pay equity issues.⁵⁵ With regard to ABS data, these deficiencies include:
- *Average Weekly Earnings:*
 - ⇒ sample size not large enough;
 - ⇒ lack of detail of industrial instrument;
 - ⇒ no data on different occupation or occupational categories;
 - ⇒ data not disaggregated to managerial and non-managerial employees; and
 - ⇒ no information on compositional change.

54 Diversity Council of Australia, *Submission No. 110*, p. 14.

55 Department of Consumer Protection and Government Employment, Government of Western Australia, *Submission No. 134*, pp. 18-23.

- *Employee Earnings and Hours*:
 - ⇒ only conducted every two years; and
 - ⇒ does not measure the spread (split-shifts) or time (weekends) of hours.

9.47 The Western Australian Government also commented that the *Employees Earnings and Hours* survey is,

...possibly the most valuable publicly released earnings dataset with information relevant to pay equity. Any proposal to reduce the survey's sample size and/or its frequency should be firmly resisted.⁵⁶

9.48 The Finance Sector Union (FSU) submitted that the most rigorous ABS data is based on "average hourly ordinary time earnings of full-time non-managerial employees" which is currently collected biennially at an industry level through the ABS *Employees Earnings and Hours* survey. FSU highlighted that:

...the two year publication cycle does not align with many other economic indicators and allows the issue of the gender pay gap to 'fade' between editions.⁵⁷

9.49 The Industrial Relations Research Centre (University of New South Wales) recognised efforts of agencies such as ABS, especially in the current financial environment, seeing greater consultation as a way to address the shortcoming of current data.

We have found the Australian Bureau of Statistics to be highly responsive to client data requirements, within the constraints imposed by budgets and data collection methods⁵⁸... We welcome the current initiative by the Australian Bureau of Statistics to consult with researchers on ways to enhance data collection to assist monitoring gender equity.⁵⁹

Committee Comment

9.50 At the very least, sample sizes and frequency of current ABS surveys should not be decreased.

56 Department of Consumer Protection and Government Employment, Government of Western Australia, *Submission No. 134*, p. 21.

57 Finance Sector Union, *Submission No. 122*, p. 3.

58 Industrial Relations Research Centre, *Submission No. 109*, p. 2.

59 Industrial Relations Research Centre, *Submission No. 109*, p. 2.

- 9.51 In light of the suggestions made of ABS regarding a number of existing surveys where possible, ABS should review existing data from previous surveys with a specific emphasis on gender pay equity issues or indicators. Conducting this review would provide some background to the gender pay equity research conducted by the ABS for the proposed Pay Equity Unit and other relevant stakeholders.
- 9.52 Evidence further supported amendments to existing data series so as to better assess gender pay equity issues. Dialogue should continue between the ABS and stakeholders to ensure that pay equity issues are better analysed through existing data series.

Recommendation 49

That the Australian Bureau of Statistics, where possible, review all existing surveys and data, relevant to pay equity, for evidence of any trends over time in pay inequity and issues affecting female participation in the workforce.

Recommendation 50

That the Australian Bureau of Statistics amend data surveys as follows:

- **Survey of *Average Weekly Earnings* (cat no. 6302.0)**
 - ⇒ **seek further detail of industrial instrument;**

seek further detail of different occupation or occupational categories; disaggregate data to managerial and non-managerial employee level.

Recommendation 51

That the Australian Bureau of Statistics, where possible, introduce gender disaggregation into all surveys that relate to pay equity issues.

Workplace Industrial Relations Surveys

- 9.53 The NSW Government commented that, the absence of AWIRS as a baseline study of workplace conditions over time left an information gap that needed to be filled. In 2005, Workplace Industrial Relations Surveys were commissioned independently by the NSW, Queensland, and Victorian Governments which provided limited additional information for the eastern seaboard states.⁶⁰
- 9.54 According to the then Department of Employment and Small Business summary of major findings:
- Prior to AWIRS 90 there were no comprehensive and statistically reliable nationwide data available on workplace relations... AWIRS 95 had the additional aim of assessing changes since AWIRS 90. Comparisons between AWIRS 90 and AWIRS 95 data provide insight into the impact of these changes at the workplace level, and allow trends in workplace relations that emerged between the survey periods to be explored.⁶¹
- 9.55 With reference to AWIRS, the Community and Public Sector Union (CPSU) stated that:
- The data collected in the survey provided invaluable longitudinal information that could be used to address pay equity concerns – not least by identifying differing equity outcomes and showing how these changed over time.⁶²
- 9.56 The CPSU recommended that AWIRS be conducted every five years and the results made publicly available free of charge.⁶³ This reinstatement, and adequate funding, of AWIRS was also endorsed by many organisations such as the National Tertiary Education Union,⁶⁴ the Work and Family Policy Roundtable,⁶⁵ and the National Pay Equity Coalition and Women’s Electoral Lobby.⁶⁶
- 9.57 The Industrial Relations Research Centre further supported the re-introduction of AWIRS,

60 Office for Women’s Policy, New South Wales Government, *Submission No. 153*, p. 38.

61 Department of Workplace Relations & Small Business, 1997, *Changes at Work: The 1995 Australian Workplace Industrial Relations Survey, A Summary of the major findings*, p. 1.

62 Community and Public Sector Union, *Supplementary Submission No. 13.1*, p. 3.

63 Community and Public Sector Union, *Supplementary Submission No. 13.1*, p. 3.

64 National Tertiary Education Union, *Submission No. 98*, p. 5.

65 Work and Family Policy Roundtable, *Submission No. 143*, p. 10.

66 National Pay Equity Coalition and Women’s Electoral Lobby, *Submission No. 118*, p. 8.

... which provided a statistically valid and reliable window into workplaces. We submit that the revival of this ongoing research agenda by the Department of Education, Employment and Workplace Relations could provide a vehicle for a contextual understanding of issues relating to pay equity.⁶⁷

9.58 The WESKI report in 2006 commented on the need to increase the regularity of key surveys and recommended the collection of comprehensive detailed indicators of employment across time. A national workplace industrial relations survey of the type being conducted in Queensland, New South Wales and Victoria was suggested as a way to address this issue.⁶⁸

9.59 In 2005, the Queensland Government undertook its own longitudinal research survey, the Queensland Workplace Industrial Relations Survey (QWIRS) with the intention to produce regular data every 3 to 5 years. The Queensland Government emphasise that whilst its state-run surveys provides a certain degree of functional data,

...they cannot truly replace a regular national survey such as AWIRS. The demise of AWIRS has left a significant void in the amount and quality of data available to monitor the conditions and wages of Australian workers.⁶⁹

9.60 Similarly, the Western Australian Government's Department of Consumer Protection and Government Employment recommended that AWIRS,

... would need to be conducted regularly (no less than every 5 years), include all variables relating to gender equity issues; allow state-level analysis; provide an ability to easily compare disaggregated survey results over time; and be developed in consultation with stakeholders, including the states.⁷⁰

9.61 The importance of data raised through AWIRS was further supported by the Victorian Government:

In order to enable the collection of national workplace and employee level data, to monitor comprehensively employment changes influencing pay equity, the Victorian Government recommends that the Commonwealth Government consider

67 Industrial Relations Research Centre, University of New South Wales, *Submission No. 109*, p. 4.

68 WISER 2006 *Towards a Database of Women's Employment Status Key Indicators*, p. xiv.

69 Queensland Government, *Submission No. 135*, p. 10.

70 Department of Consumer Protection and Government Employment, Government of Western Australia, *Submission No. 134*, p. 23.

conducting an Australian Workplace Industrial Relations Survey (AWIRS).⁷¹

9.62 The National Foundation for Australian Women suggested one way to improve monitoring systems of workplace data was to,

Conduct annual national workplace industrial relations surveys of the type undertaken in Queensland, New South Wales and Victoria.⁷²

9.63 WESKI identified the following data sets as invaluable to plotting pay equity trends:

- average hourly and weekly wage rates for employees in non-managerial and non-professional occupations;
- provisions for the adjustment of wages rates during the life of the agreement;
- compensatory wage payments for the absorption of penalty rates and/or other employment conditions;
- the inclusion of non wage benefits such as bonus payments;
- the incidence of trading off provisions, such as annual leave for wage payments;
- the incidence of averaging ordinary working hours across several weeks or months and common averaging periods used for this purpose;
- ordinary working hours, including the incidence of ordinary working hours of more than forty per week;
- the availability of flexible start and finish times and breaks;
- developments or changes in the standards of family-friendly provisions such as access to paid family or parental leave;
- the availability of other forms of leave such as annual leave, unpaid leave and long service leave; and
- access to family friendly employment benefits such as employer provided or subsidized childcare.⁷³

71 Department of Innovation, Industry and Regional Development, Victorian Government, *Submission No. 136*, p. 7.

See also, Ms Sarah Tuberville, Officer, Department of Innovation, Industry and Regional Development, Victorian Government, *Transcript of Evidence*, 2 April 2009, p. 4.

72 National Foundation for Australian Women, *Submission No. 94*, p. 6.

73 WISER 2006 *Towards a Database of Women's Employment Status Key Indicators*, p. xiv.

Committee Comment

- 9.64 The fundamental problem with pay equity data formerly available from AWIRS is that it is no longer available. The reintroduction of AWIRS is supported by a number of organisations as a method of addressing the lack of adequate information, and is one of the major recommendations of the WESKI report.
- 9.65 A survey, such as AWIRS, provided national scale data on industrial relations. An updated survey that incorporates variables relating to gender equity issues into the original survey would show results in any workforce changes, and also provide information on the outcomes of any gender pay equity initiatives.
- 9.66 Cognisant that the cost of reinstating AWIRS in full may prove problematic, it is proposed that a National Pay Equity Workplace Survey be developed. Like AWIRS this survey would be national in scale and at workplace level, however focussed primarily on pay equity issues.
- 9.67 Allowing for a more focussed approach in survey data collection on pay equity, as well as more regular collection of every two years rather than five, provides accurate and adequate data that is needed to better analyse and monitor Australia's pay equity issues.
- 9.68 As the previous AWIRS were conducted by the then Department of Industrial Relations, it would be appropriate that the current Department of Education, Employment and Workplace Relations be responsible for undertaking the new survey. The Pay Equity Unit, in conjunction with DEEWR, would develop the survey and analyse its results. To allow adequate time for collation and analysis of survey outcomes but keeping the information timely, this survey should be conducted every two years.

Recommendation 52

That a National Pay Equity Workplace Survey be developed and conducted biennially by the Department of Education, Employment and Workplace Relations in partnership with the Pay Equity Unit.

The survey should cover, but not be limited to:

- **average hourly and weekly wage rates for employees in non-managerial and non-professional occupations;**
- **provisions for the adjustment of wages rates during the life of the agreement;**
- **compensatory wage payments for the absorption of penalty rates and/or other employment conditions;**
- **the inclusion of non wage benefits such as bonus payments;**
- **the incidence of trading off provisions, such as annual leave for wage payments;**
- **the incidence of averaging ordinary working hours across several weeks or months and common averaging periods used for this purpose;**
- **ordinary working hours, including the incidence of ordinary working hours of more than forty per week;**
- **the availability of flexible start and finish times and breaks;**
- **developments or changes in the standards of family-friendly provisions such as access to paid family or parental leave;**
- **the availability of other forms of leave such as annual leave, unpaid leave and long service leave; and**
- **access to family friendly employment benefits such as employer provided or subsidized childcare.**

Household Income and Labour Dynamics Australia

9.69 Not unlike the AWIRS, there was widespread support from a number of submissions and witnesses for maintaining the HILDA survey. As pointed out by the Western Australian Government, the HILDA survey is

household-based, which provides a helpful counterpoint to employer or workplace-based surveys.⁷⁴

- 9.70 Whilst the Work and Family Policy Roundtable acknowledged the development in Australia of longitudinal studies being established, the Roundtable continued;

...some extension would be needed to adapt a survey such as HILDA as an effective vehicle for tracking gender pay equity issues.⁷⁵

- 9.71 Suggestions for improvement to the HILDA survey supported a recommendation of the WESKI report which highlighted that currently, HILDA survey respondents are not asked about their specific type of employment contract or agreement relevant to determining respondents' conditions of employment which:

...limits [HILDA] usefulness as a database for monitoring relationships between forms of employment contract and employment benefits.⁷⁶

- 9.72 Recommendation 12 of the WESKI 2006 report states that:

Consultation should take place as soon as possible between the Government, key users of workplace relations information and administrators of the Household Income and Labour Dynamics in Australia (HILDA) survey to discuss the feasibility of including a question about respondents' type of employment contract.⁷⁷

Committee Comment

- 9.73 HILDA provides valuable data, and has advantages of a regular annual reporting period to analyse trends over time. Recommendation 12 of the WESKI report proposes the inclusion of a question, or questions, about type of employment contract or agreement. Consultation over this extension to HILDA should be undertaken between:

- Department of Families, Housing, Community Services and Indigenous Affairs (as the government agency responsible for funding and managing HILDA); and

74 Department of Consumer Protection and Government Employment, Government of Western Australia, *Submission No. 134*, p. 20.

75 Work and Family Policy Roundtable, *Submission No. 143*, p. 10.

76 WISER 2006 *Towards a Database of Women's Employment Status Key Indicators*, p. xiii.

77 WISER 2006 *Towards a Database of Women's Employment Status Key Indicators*, p. xviii.

- Melbourne Institute of Applied Economic and Social Research at the University of Melbourne;
- Australian Council for Educational Research; and
- Australian Institute of Family Studies (as members of the research consortium contracted to design, develop and conduct HILDA).⁷⁸

Recommendation 53

That the Department of Families, Housing, Community Services and Indigenous Affairs consult with:

- **Melbourne Institute of Applied Economic and Social Research at the University of Melbourne;**
- **Australian Council for Educational Research;**
- **Australian Institute of Family Studies, and**
- **the Pay Equity Unit,**

in relation to possible improvements to Household Income and Labour Dynamics Australia survey to encompass pay equity considerations.

Women's Interdepartmental Committee

- 9.74 The list of agencies that have senior executive representation is promising, and other Commonwealth departments and agencies are urged to join the WIDC.
- 9.75 The concern with overlap or duplication of responsibilities remained a theme from the beginning of the inquiry as there appeared to be no formerly established form of coordination between Commonwealth departments and agencies. The Women's Interdepartmental Committee is a welcome initiative as it provides a mechanism for this dialogue to occur.
- 9.76 Given the current agency representation, specifically FaHCSIA, DEEWR, ABS, the Treasury, and the Department of Finance and Deregulation, there is an opportunity for the sharing and compilation of data specific for the research and analysis of issues affecting pay equity. This information should be submitted to the Pay Equity Unit.

⁷⁸ Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Submission No. 112*, p. 16.

Committee Comment

- 9.77 The Office for Women is to be commended on its establishment of the Women's IDC since its appearance before the Committee at the beginning of the inquiry. The Women's IDC is one of the first steps to greater consultation between government departments and agencies.
- 9.78 In line with the recommendations of this report, the Women's IDC should continue into the future gaining greater representation from the wider public service.

Pay Equity Unit – Research Function

- 9.79 The proposed federal Pay Equity Unit would have three general functions. One of which would be undertaking and coordinating a variety of research to provide further information on issues related to pay equity in Australia. The Pay Equity Unit must have the capacity and resources to undertake monitoring and research if it is to act effectively to ensure compliance and identify areas where education is required.
- 9.80 The rationale behind the comprehensive research functions of the Pay Equity Unit is that arguing pay equity cases is impossible without reliable accurate and up to date data on pay and conditions in industries and occupations when performing a gender neutral work value evaluation. Fair Work Australia needs reliable pay equity data to perform its award and minimum wage fixing functions. Furthermore, the data is necessary for Australia's reporting obligations under ILO and CEDAW.
- 9.81 Much of the data collection is likely to be obtained through existing systems, but the data must also be disaggregated if it is to identify and track pay equity.

Data, research and analysis function

- 9.82 The establishment of a Pay Equity Unit with a substantial research role would provide the required information to form the basis for future policy directions and enable Australia to reduce the gender pay gap and meet its commitment under its international obligations. The functions of the research facility within the Pay Equity Unit in relation to data collection would include:
- developing appropriate tools and programs to assist employers to design pay equity plans and implement the audits for reporting purposes;
 - monitoring and evaluating the effectiveness of workplace programs;

- preparing relevant reports to the Minister and Government on wages and conditions and changes in pay equity outcomes;
- providing information and assistance to employers through the maintenance of a website; and
- facilitating the collection of consistent and comparable data through liaison with Australian Bureau of Statistics, Australian Taxation Office and other relevant Federal agencies and the Australian Public Service Commission, State and Local Governments, research institutions, business and industry bodies, unions and other relevant groups.

Committee Comment

9.83 A number of changes would be needed to ensure the effectiveness of the establishment of the research branch within the Pay Equity Unit, and should include:

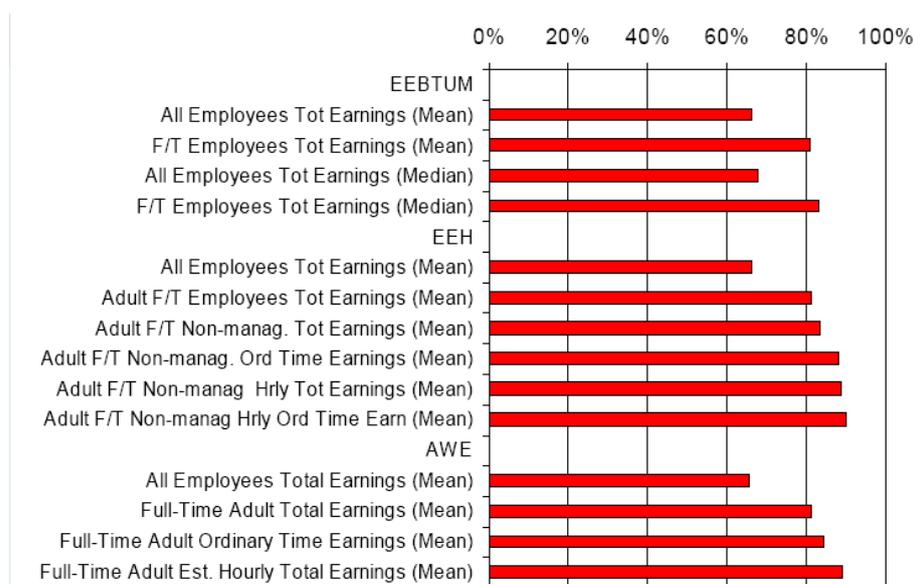
- that the data, research and analysis be available for tri-annual reporting to Fair Work Australia with an obligation on the relevant Minister to table the report in Parliament within 10 sitting days;
- the collection of data may be sourced through the Australian Taxation Office and the Australian Bureau of Statistics and be available on an occupation and industry basis and able to track trends over time.
- that a cross agency working group be established to ensure the data collection is comprehensive and fit for purpose;
- amending the *Fair Work Act* to extend the statutory research obligations of Fair Work Australia to conduct three yearly reports to include additional three yearly separate reporting on pay equity;
- that the amendment make clear that for pay equity purposes the data must be disaggregated on the basis of gender and, in recognition that additional factors aggravate pay equity, include also disability, age, ethnicity, child care responsibilities, and marital status.
- that the data also be available for industry and occupational analysis at the direction of the Fair Work Australia for the purpose of exercising its own functions under the Act (e.g. equal remuneration case or annual wage review).

9.84 The Committee believes that in order to address pay equity issues within and across industries, it is vital that current, consistent relevant data be collected and analysed by the Pay Equity Unit.

- 9.85 The Pay Equity Unit will provide an annual report to the Minister for the Status of Women, highlighting any pay equity issues and progress made in achieving gender pay equity.

Working Group - Consistency of Data

Figure 9.1 Female earnings as a proportion of male earnings



Source Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender Earning differentials in Australia: A statistical overview of women's earnings*, unpublished, p. 4.

- 9.86 Vital to developing a national approach to the analysis, and subsequent addressing, of gender pay equity issues, is the consistency in collection and analysis of data.

There are two broad ways of examining the gender pay gap. The first is by using weekly earnings measures. The second is using hourly earnings measures. Hourly earnings measures provide a narrower gender pay gap than weekly measures because women tend to work fewer hours per week than men. Indeed, males employed full-time work about 10 per cent more total hours per week than full-time females.⁷⁹

Using total average weekly ordinary time earnings of full-time adults (exclusive of overtime payments), the gender pay gap stood at 16.2 per cent in May 2008 based on AWE, and 15.4 per cent in May 2006 based on EEH. Women do not receive overtime earnings

⁷⁹ Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 5.

to the same extent as men. When overtime payments are included in the average weekly total earnings, the gender pay gap estimates in the three surveys are higher at 19.5 per cent for AWE, 18.8 per cent for EEH and 19.9 per cent for EEBTUM.⁸⁰

9.87 There is a need for greater coordination amongst stakeholders and relevant government agencies, and this should be facilitated by the proposed Pay Equity Unit. Effective consultation between research bodies will reduce the possibility of repetition of research, and help to provide a focussed approach to addressing pay equity issues. Similarly, coordination and consultation between government bodies is paramount to avoiding any overlap of responsibilities, and make best use of existing resources.

9.88 The NSW Office for Women stated that;

One of the challenges in building public awareness of pay equity issues is the fact that gender pay gaps can be measured in different ways, and that there is no consistently reported measure or common access point for research and data analysis of these matters in the Australian context.⁸¹

9.89 In regard to hourly versus weekly earnings, ABS stated that the gender wage gap can be quite different when looking at an hourly perspective, not unlike comparing gender wage gaps between full time employees and part time employees.⁸²

9.90 Similarly the use of mean, rather than median, in earnings analysis is not necessarily the most representative of average as it can be skewed by outliers. In one example of a data series provided by the ABS, 65 percent of employees surveyed earned less than the mean.⁸³

9.91 A national working group within the Pay Equity Unit of Fair Work Australia would be best placed to coordinate the national collection and analysis of data with regard to pay equity issues. Membership of the working group should include:

- Commonwealth departments and agencies:
 - ⇒ Australian Bureau of Statistics;

80 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 5.

81 Office for Women, NSW Government, *Submission No. 153*, p. 7.

82 Mr Michael Gerrity, Assistant Director, Australian Bureau of Statistics, *Transcript of Evidence*, 13 November 2008, p. 5.

83 Mr Michael Gerrity, Assistant Director, Australian Bureau of Statistics, *Transcript of Evidence*, 13 November 2008, p. 5.

- ⇒ Australian Public Service Commission;
 - ⇒ Australian Taxation Office;
 - ⇒ Department of Education, Employment and Workplace Relations
 - ⇒ Department of Families, Housing, Community Services and Indigenous Affairs;
 - relevant stakeholders:
 - ⇒ State and local government;
 - ⇒ Industry groups and individual businesses;
 - ⇒ Unions
 - ⇒ Universities;
 - ⇒ Research bodies and institutions.
- 9.92 Depending on the focus of the working group at a particular point in time, persons or organisations with specialist knowledge may be invited to have input into any research or initiatives being established and developed.
- 9.93 The working group also presents an opportunity for sharing of knowledge and initiatives that departments and relevant stakeholders may undertake to address issues concerning gender inequality in their respective organisations. Much of the concern with assessing the gender pay gap, pay inequity and women's participation in the workforce has been the lack of consistent data upon which to assess and analyse these issues.
- 9.94 Industry groups, private businesses, academics and government agencies conduct a number of surveys that are relevant to pay equity considerations. However, the type of data collected often lacks comparability to other surveys thus limited its usefulness. An important function of the working group would be to liaise with private organisations and public sector entities in relation to the surveys being conducted to encourage greater comparability of measurements.
- 9.95 Consequently, the role of this working group should be outlined as follows:
- to manage the sharing of existing data and resources in relation to pay equity, ensuring consistency and relevance; and
 - to coordinate further national scale pay equity research, initiatives, programs and surveys.

Recommendation 54

That a working group consisting of Commonwealth departments and agencies, as well as relevant stakeholders be established within the Pay Equity Unit to progress greater comparability of data collections.

Women's choices?

- 10.1 Dr Patricia Todd made the point that men presume that pay equity is due to the choices that women make.¹

... culture and attitudinal change, which are the hardest things to change. But, without that change, we will not see any progress ... for many years we have been working to fix women. In a sense we are trying to put the female life cycle into a male career model and – do you know what?– it is not working.²

Workforce participation

- 10.2 The increase in female participation in the labour market since the 1980s has been attributed to a number of factors including changing social attitudes to women working and greater acceptance of working mothers and the perception of gender roles; women having children later in life reduced fertility rates, childcare access; more flexible work options; an increase in part-time employment opportunities through the growth of service related industries and an increase in female participation in further education.³

In terms of workforce participation, women's labour force participation rose substantially, from 43.7 per cent in July 1978 to 58.4 per cent in July 2008. Since 1978 full-time employment for women has risen by 88.6 per cent and part-time employment has

1 Dr Patricia Todd, Senior Lecturer, Industrial Relations and Human Resources and Co-Director, Consortium for Diversity at Work, Business School, University of Western Australia, *Transcript of Evidence*, 5 November 2008, p. 58.

2 Commissioner Elizabeth Broderick, Sex Discrimination Commissioner, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, p. 9.

3 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 21. See also Associate Professor Siobhan Austen, *Submission No. 126*, p. 2.

risen by 193.7 per cent. Australia's increasing participation rates for women is similar to other OECD countries and Australia ranks fifth overall across the OECD.⁴

- 10.3 In 2006-2007, the unemployment rate for women was 4.8 per cent compared to 4.3 per cent for men.⁵

There is a range of economic and social factors that have changed women's life patterns and choices. These include:

- Increasing school retention rates and participation in post-school education and training;
- The availability of child care services;
- the introduction of anti-discrimination, equal opportunity and equal remuneration legislation;
- increased workplace flexibility to support some employees – mostly women- to balance paid work with family responsibilities;
- changing societal values regarding women's roles.⁶

- 10.4 Research has shown that wages are a significant factor in an individual's decision to enter the labour force.⁷ The Queensland Government commented that:

the labour supply of Australian women concluded that it is clear that increases in women's wages, the cost of living, the availability of suitable jobs, educational attainment, labour market experience and duration of residence are all recognised to significantly increase women's labour force participation and the number of hours they work. The research also suggests that Government policies, such as access to child care, the removal of gender discrimination laws and the implementation of family friendly practices, affect the labour supply of women.⁸

- 10.5 Associate Professor Siobhan Austen considered that 'an important driver for change in women's position on the distribution of income should be

4 Ms Sandra Parker, Group Manager, Workplace Relations Policy Group, Department of Education, Employment and Workplace Relations, *Transcript of Evidence*, 18 September 2008, p. 2.

5 Security for Women, *Submission No. 17*, p. 6 citing ABS Year Book Australia 1 August 2008.

6 Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Submission No. 112*, p. 3 citing I Fraser, 'Forty years of combined oral contraception: the evolution of a revolution', *Medical Journal of Australia*, 2000, pp. 173, 541-544.

7 Queensland Government, *Submission No. 135*, p. 5.

8 Queensland Government, *Submission No. 135*, p. 5.

their employment status and their earnings from employment, with both influenced heavily by educational attainment.⁹

One of the key questions discussed in our consultations was whether women are making real choices or just compromises based on external pressures ... men also talked of lacking choices, with employers often resistant to offering flexible or part-time work so that men could take a major role in caring for their families.¹⁰

10.6 Job Network provides various forms of assistance to women wishing to return to the labour force.¹¹

If you did finally have pay equity between men and women you would then see different family choices being made. You might see the mother going for the promotion because she is not going to be earning a whole lot less than the man. It is a no-brainer who stays home if she is not earning anything and she has no career anyway – she may as well stay home because the family is better off. So you start to change all the decisions that are made by a family, however it is structured. That is another benefit of pay equity.¹²

10.7 In terms of encouraging more women to participate in the workforce, it is possible through flexibility and the environment and valuing the work they do rather than through wages.¹³

Family friendly policies

10.8 Family friendly policies that incorporate gender equality include to:

- Facilitate the reconciliation of work and family life through the adequate family and child development resources;
- Facilitate parental and other carers' choices about work and care;
- Promote gender equality in employment opportunities;

9 Associate Professor Siobhan Austen, *Submission No. 126*, p. 3.

10 Human Rights and Equal Opportunity Commission (2008) *Gender equality: What matters to Australian women and men, the Listening Tour Community Report*, p. 10.

11 Department of Education, Employment and Workplace Relations, *Submission No. 58*, pp. 24-25.

12 Ms Barbara Jennings, Women's Officer, Victorian Trades Hall Council, *Transcript of Evidence*, 2 April 2009, p. 82.

13 Mrs Sandra Cook, Director of Policy, Business and Professional Women Australia, *Transcript of Evidence*, 5 November 2008, pp. 12-13.

- Increased recognition of the relationship between workplaces and the broader community and specifically of the care arrangements that support the workplace;
- A mix of both certainty and flexibility in the conditions of work, adaptable for employees across the life course;
- The need for structural changes to support gender equality and equality for carers (such as improving pay equity and quality part time work);
- Expanded legal rights, specifically improved protection from discrimination, a right to maternity leave and a right to request flexible work arrangements; and
- The need for cultural change in workplaces to implement existing family-friendly provisions and drive further changes.¹⁴

Impact on women's life time earnings

10.9 The cost to women of their temporary or permanent withdrawal from the paid labour force is significant in terms of current and future foregone earnings and is clearly illustrated in Figure 10.1. This figure uses long-term labour force data to determine the amount of earnings foregone by women due to raising children.¹⁵

10.10 In addition, part time employment is often casual employment and lacks the job security and leave entitlements of permanent work, however, the Productivity Commission reported that the share of casual employees in part time employment has declined over the last 15 years.¹⁶

Part time employment has a negative impact on lifelong earnings and reinforces a women's subordinate role in the labour market and the household. Lower earnings are the result not only of the lower number of hours worked but also the type of part time positions that are available. Permanent part time work

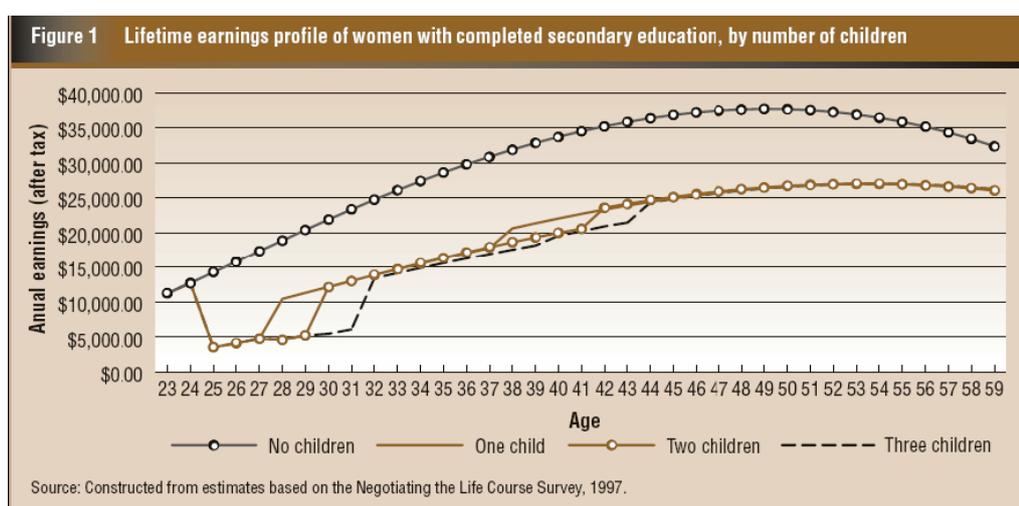
14 Human Rights and Equal Opportunity Commission, 2007 *It's About Time Women, men, work and family Final Paper 2007*, pp. 67, 74.

15 Queensland Government, *Submission No. 135*, p. 5 citing Gray M, Chapman B, 2001, 'Foregone earnings from child rearing: Changes between 1986 and 1997', *Family Matters*, 58 p. 3; Beggs J, Chapman B, 1988, *The Foregone Earnings From Child rearing*, Discussion Paper no. 190, Centre for Economic Policy Research, Australian National University, Canberra.

16 Productivity Commission, *Part time employment: The Australian experience*, June 2008, p. xxi.

marginalised through the lack of higher earnings, promotion, and training opportunities that it provides.¹⁷

Figure 10.1 Life time earnings profile of women with completed secondary education, by number of children¹⁸



10.11 In the lowest quintile, women with no dependent children earn more than males but in all other quintiles females earn less than males indicating that 'there is evidence of there being a glass ceiling effect for women. That is the gender wage gap increases at the upper end of the income distribution'.¹⁹

Evidence from Australia has shown that part time work experience can 'scar' women's future earnings and has significant impact on total earnings over the life course. Chalmers and Hill's analysis of data from the Negotiating the Life Course (NLC) survey found that part time women workers lose 6% per year in earnings growth compared to their full time counterparts and that this loss accumulates to 49% after ten years.²⁰

17 Industrial Relations Victoria, Submission 160, p. 38 to the Human Rights and Equal Opportunity Commission, Balancing work and family responsibilities inquiry, *It's About Time: Women, men work and family*, Final Paper 2007, cited on p. 77.

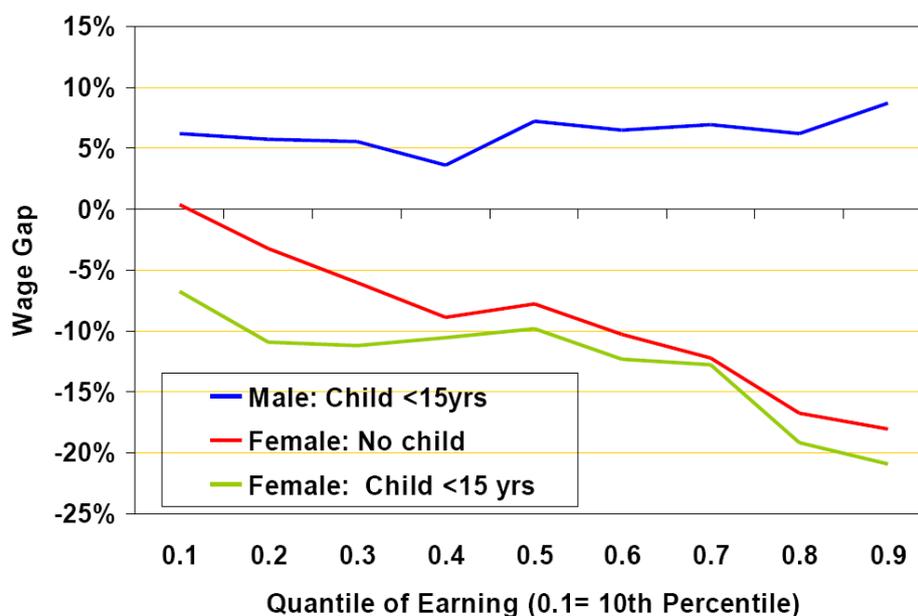
18 Queensland Government, *Submission No. 135*, p. 5.

19 Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender earnings differentials in Australia: A statistical overview of Women's earnings*, unpublished, p.46.

20 New South Wales Office for Women's Policy, *Submission No. 153*, p. 17. citing Jenny Chalmers and Trish Hill, 'Marginalising Women in the Labour Market: "Wage Scarring" Effects of Part-Time Work', *Australian Bulletin of Labour*, 33 (2) 2007, pp.180-201; AMP.NATSEM, *She Works Hard for the Money: Australian Women and the Gender Divide*, AMP.NATSEM Income and Wealth Report, Issue 22, April 2009.

Figure 10.2 The earnings gap in the private sector of women without children, women with children and men with children relative to men without dependent children²¹

**HILDA Hourly Rate – Relative to Male with no dependent children
Quantile Regression**



Source Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender earnings differentials in Australia: A statistical overview of Women's earnings*, unpublished,

- 10.12 Hourly rates for part time work are often higher as they can incorporate casual leave loadings which are designed to compensate the employee for benefits such as paid leave that are foregone. Women who move to casual employment to accommodate family consideration may not be aware that they lose their accrued sick leave, so it is not only about level of pay.²²

21 Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender earnings differentials in Australia: A statistical overview of Women's earnings*, unpublished, p.46. The horizontal axis shows the income quintile points and the vertical axis indicate the earnings gap relative to a base case of a male without children under the age of 15 years.

22 Dr Sara Charlesworth, Research Fellow, Centre for Applied Social Research, *Transcript of Evidence*, 2 April 2002, p. 26.

Choice or compromise?

10.13 The New South Wales Office for Women's Policy commented that:

the difference between men's and women's wages has the potential to narrow the choices that women and families can make about how they balance their paid work and family life.²³

10.14 Commissioner Broderick concluded that:

... workplace structures and the expectations that accompany paid work significantly limit the choices that women and men make about how they manage their family responsibilities.²⁴

10.15 In relation to the choice between full time and part time work, Women's Health Victoria commented:

If women were able to work full time and to have an amount of income that was available to them that they could use to bring in additional services to meet their need to maintain the household and provide care to an increasingly diverse range of relatives, through children to aged parents to the rest of the extended family, I do not know that the issue of choice really comes into it. I think that women increasingly do not have access to permanent full-time work which can be negotiated down to part time and back to full time depending on changing needs throughout their lives. They are increasingly only able to get casual work, which means no paid sick leave and no paid annual leave. Many women do not understand that that is the only thing available to them when many of their peers are also involved in employment in that way.²⁵

10.16 Ms Emma Ritch, Manager, Close the Gap in Scotland commented that:

I think there is a conception that women intentionally choose to work in low-paid, low-status and low-remuneration types of work. I think that the choices are not made freely, as it were. I think that the choices that all individuals make about their labour market participation are heavily influenced by a range of factors, some of them social and some of them to do with skills and some of them to do with employers. Sometimes the assumption that

23 New South Wales Office for Women's Policy, *Submission No. 153*, p. 13.

24 Human Rights and Equal Opportunity Commission (2008) *Gender equality: What matters to Australian women and men, the Listening Tour Community Report*, p. 10.

25 Ms Marilyn Beaumont, Executive Director, Women's Health Victoria, *Transcript of Evidence*, 2 April 2009, p. 42.

they are all based on completely free choice means that employers, educators and others abrogate responsibility for tackling some of them. I think we need to be a bit bolder than that.²⁶

Part time positions

10.17 Australia has a relatively high level of part time employment compared to other countries and has the second highest in the OECD countries behind the Netherlands.²⁷ Over the last decade there has been an increase in participation in part-time employment.

Whilst average gender wage gap in the full-time (Australian) labour market has remained fairly stable there is evidence of a growing part-time/full-time wage gap.²⁸

10.18 Women are four times more likely than men to be part time and are also more likely to be casual and work in the public sector.²⁹

Part-time employment, which currently comprises 44.3 per cent of total female employment, is particularly important to many women, as it gives them the flexibility to balance work with family responsibilities, study and other commitments. Indeed, most women working part-time do not want a full-time job. Latest available ABS data showed that nearly 80 per cent of women working part-time preferred not to work more hours, while just 4.5 per cent were actively seeking and available to start full-time work in May 2008.³⁰

10.19 The Work and Family Policy Roundtable expressed about the risks associated with part time employment in terms of poor hourly wages and casualisation noting that in 'recent years have also seen a sharp drop in the full-time employment participation of women after the age of 29 and a shift away from full-time employment by women aged 35-44'.³¹

26 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 11.

27 Productivity Commission, *Part time employment: The Australian experience*, June 2008, p. xviii.

28 Preston A (2007) *Trends in the Gender Pay Gap*, Paper presented to the Fair Pay, Equal Pay – What are the prospects for West Australian Women?, 2 March 2007, Women in Social and Economic Research, Curtin University of Technology.

29 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, p. 7.

30 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 21.

31 Work and Family Policy Roundtable, *Submission No. 143*, p. 7 citing Preston A and T Jefferson, 2007, 'Trends in Australia's Gender Wage Ratio' *Journal of Labour and Industry*, 18(2): 69-84.

Part-time employment tends to be clustered into a narrow set of highly feminised occupations, often in the low wage economy where access to promotion, employer provided training and decent pay is often limited even for part-time workers employed on a permanent basis.³²

10.20 New South Wales Office for Women's Policy commented that:

Part time work remains a female dominated form of employment. Only 35% of full time employees are female. On the other hand, females represent 71% of all part time employees. Table 5 shows this in terms of the aggregate numbers of workers in full time and part time employment by gender breakdown.³³

Table 10.1 Australian labour force by gender breakdown, April 2009

Full time	Males	4.9 million
Full time	Females	2.7 million
Part time	Males	0.94 million
Part time	Females	2.2 million

Source Australian Bureau of Statistics - Labour Force Survey, cat no 6202.0, April 2009 – seasonally adjusted³⁴

10.21 The Productivity Commission concluded that the growth in part time workers reflects both supply and demand factors in the labour market.³⁵ The factors include the entry of more women into the labour force; students wanting to work while studying; older workers remaining in the workforce; and employers requiring flexibility and therefore offering part time jobs.³⁶

32 Work and Family Policy Roundtable, *Submission No. 143*, p. 8 citing Preston A and Whitehouse G, 2004, 'Gender Difference in Occupation of Employment in Australia', *Australian Journal of Labour Economics* 7(3): pp. 309-327; and Campbell I, 2008, 'Australia: Institutional changes and workforce fragmentation' in S Lee and F Eyraud (eds) *Globalization, Flexibilization and Working Conditions in Asia and the Pacific*, Oxford: Chandros Publishing and Elton J, Bailey J, Baird M, Charlesworth S, Cooper R, Ellem B, Jefferson T, Macdonald F, Oliver D, Pocock B, Preston A and G Whitehouse, 2007, *Women and WorkChoices: Impacts on the Low Pay Sector* at <http://www.unisa.edu.au/hawkeinstitute/cwl/documents/women-work-choices-full.pdf>.

33 New South Wales Office for Women's Policy, *Submission No. 153*, p. 17.

34 Cited in New South Wales Office for Women's Policy, *Submission No. 153*, p. 17.

35 Productivity Commission, *Part time employment: The Australian experience*, June 2008, pp. xviii-xx.

36 Productivity Commission, *Part time employment: The Australian experience*, June 2008, p. xx.

Table 10.2 Characteristic of employment excluding owner managers ³⁷

	Full Time	Part Time	Total
No paid holiday leave			
Male	12.8%	73.0%	22.1%
Female	10.4%	53.3%	30.1%
Percent of Employment			
Male	84.5%	15.5%	100.0%
Female	54.1%	45.9%	100.0%
Percent employment in public sector			
Male	17.2%	13.6%	16.7%
Female	28.5%	19.2%	24.2%

Source Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender earnings differentials in Australia: A statistical overview of Women's earnings*, unpublished, p. 3.

10.22 Women between 25 and 54 years represent 44 per cent of part time workers in 2007, and those aged 15-24 years nearly 28 per cent of the part time workforce.³⁸ Part time work was more likely to be low skilled work with less than a quarter of part time workers employed in the high skilled occupation category of professional and associate professionals compared to 35 per cent of full time workers.³⁹ Further, 5 per cent of fulltime workers were in the low skilled occupations of elementary clerical and services compared to 21 per cent of those working part time.⁴⁰

Part-time work can reduce a woman's likelihood of promotion, participation in training and development opportunities that relate to the profession, the social culture of the work environment, ability to establish networks, and access to quality work.⁴¹

10.23 The Police Federation of Australia noted that 21 per cent of police officers were female and saw an increase in the availability of part time positions as a potential way to increase female participation in the police forces.⁴² About 6 per cent of police officers are part time (compared to 34 per cent of all Australian employees), 24 per cent of female and one per

37 Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender earnings differentials in Australia: A statistical overview of Women's earnings*, unpublished, p. 3.

38 Productivity Commission, *PC Update*, August 2008, *Part time employment: The Australian experience*, p. 9.

39 Productivity Commission, *Part time employment: The Australian experience*, June 2008, p. xvii.

40 Productivity Commission, *Part time employment: The Australian experience*, June 2008, p. xvii.

41 Women's Health Victoria, *Submission No. 80*, p. 2 citing Business Victoria (2006) *Causes of Gender Pay Gap*. Government of Victoria. Available at: <http://www.business.vic.gov.au/BUSVIC/STANDARD.HTML/PC_61632.html> Accessed 4 August 2008.

42 Police Federation of Australia, *Submission No. 96*, pp. 3, 12.

cent of male officers working part time and no part time work was available above the level of sergeant.⁴³ Further male officers work longer hours on a regular basis.⁴⁴

- 10.24 For some employers having many part timers on the roster is cheaper than casual employees.⁴⁵ However, for many there is a barrier in management that believes that it is harder to manage more part time people.⁴⁶ Further ACTCOSS noted that:

... workplaces with a significant part time workforce were less likely to provide information to employees than were workplaces with fewer part time employees. Part time workers were much less likely to be consulted by higher level managers and unions or through meetings on workplace change, and were more likely to rely on information from fellow workers than full-time staff.⁴⁷

80% of managers with significant proportions of part-time staff claimed special measures were taken to pass information on, but only 40% of all workplaces held meetings at times that enabled the attendance of all employees.⁴⁸

- 10.25 The issue of underemployment and wanting more challenging positions is a productivity and whole-of-community issue.⁴⁹ People work part time to combine work with education; to care for children but is this because part time work is preferred or because full time work could not be found.

Underemployment tends to be more common in the lower skilled occupation groups such as elementary clerical, sales, service workers and labourers. People employed in higher skilled occupations that include managers and administrators are much less likely to be underemployed. The higher rate of underemployment among those in lower skilled occupations can be partly attributed to their employment status as more likely being part-time. Part-time workers account for more than 90% of

43 Workplace Research Centre, 2008, *Police at Work: The Benchmark Report*, University of Sydney.

44 Police Federation of Australia, *Submission No. 96*, p. 3.

45 Mr Nicolas Blake, Federal Industrial Officer, Australian Nursing Federation, *Transcript of Evidence*, 24 October 2008, p. 32.

46 Dr Patricia Todd, Senior Lecturer, Industrial Relations and Human Resources and Co-Director, Consortium for Diversity at Work, Business School, University of Western Australia, *Transcript of Evidence*, 5 November 2008, p. 67.

47 ACT Council of Social Services, *Submission No. 54*, p. 8.

48 ACT Council of Social Services, *Submission No. 54*, p. 8.

49 Ms Nareen Young, Executive Director, Diversity Council Australia Ltd, *Transcript of Evidence*, 26 September 2008, p. 38.

all underemployed workers, and in May 2008, sixty-five percent (65%) of elementary clerics, sales and service workers were women; almost 44% were aged 15-24 years⁵⁰.

- 10.26 Caring responsibilities are often not ideal in terms of preferred hours or job quality. Diversity Council Australia commented that Gen Y men are being asked if they intend to have children since the uptake of caring responsibilities by this generation.⁵¹ The current employment market view of care arrangements have not kept pace with the community need or expectations.⁵²

... unless women and men take up flexible work in equal numbers, the male primary breadwinner model will remain unchallenged and unchanged.⁵³

Quality part time work

- 10.27 The Productivity Commission found that part time work:

- Generally involved less responsibility and jobs were generally found to be less challenging;
- Less likely to lead to promotions; and
- Less likely to have access to entitlements (37% of part time employees had access to paid holidays and sick leave compared to 89% of full time employees).⁵⁴

- 10.28 The Department of Consumer and Employment Protection, Western Australia:

... quality part time employment enables individuals to combine economic participation and family care and is comparable to full time employment in terms of conditions, opportunities and

50 Women's Health Victoria, *Submission No. 80*, p. 2 citing Australian Bureau of Statistics (2008). Australian Labour Market Statistics July 2008. ABS Cat. No. 6105.0. Located at: [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/C13A89556EEE7941CA25747A00116F59/\\$File/61050jul%202008.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/C13A89556EEE7941CA25747A00116F59/$File/61050jul%202008.pdf) Accessed 5 August 2008.

51 Ms Nareen Young, Executive Director, Diversity Council Australia Ltd, *Transcript of Evidence*, 26 September 2008, p. 43.

52 Ms Nareen Young, Executive Director, Diversity Council Australia Ltd, *Transcript of Evidence*, 26 September 2008, p. 44.

53 Human Rights and Equal Opportunity Commission (2008) *Gender equality: What matters to Australian women and men, the Listening Tour Community Report*, p. 11.

54 Productivity Commission, *Part time employment: The Australian experience*, June 2008, p. xxviii.

benefits, apart from reduced hours. Genuine quality part time employment creates the potential for men and women to share paid work and care.⁵⁵

10.29 The assessment of quality part time work was defined in terms of ten criteria:

- the number of hours and whether they match the individual's preferences;
- the scheduling of the hours of work;
- the flexibility in the number of hours and schedule;
- the ability to move between full-time and part time in the same job;
- remuneration;
- access to employment benefits such as leave and superannuation;
- employment security;
- opportunity for employee voice through workplace consultative arrangements;
- access to training and career progression opportunities; and
- content of jobs.⁵⁶

10.30 Women with school age children often work in areas that are not related to their qualifications.⁵⁷

I think there is a good argument for good part-time work for women in that it enables an ongoing attachment to the workforce. It keeps them current, and our patterns as workers, both men and women, should be able to be flexible over a lifetime of earnings. I have no beef about good part-time work; I think it is essential. Hopefully, the conditions around the marginal areas of casual work can be tightened up to provide better protection for people.⁵⁸

55 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 44.

56 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, pp. 43-44 citing Chalmers J, Campbell I and Charlesworth S, 2005, 'Part-time Work and Caring Responsibilities in Australia: Towards an Assessment of Job Quality', *Labour and Industry*, 15(3), pp. 41-66.

57 Ms Samira Douglas, Chief Executive Officer, WIRE - Women's Information Centre, *Transcript of Evidence*, 2 April 2009, p. 91.

58 Ms Sandra Dann, Director, Working Women's Centre South Australia, *Transcript of Evidence*, 6 November 2008, p. 45.

10.31 Scientists from the Howard Florey Institute called for the availability of part time fellowships and the introduction of a new award to assist the re-introduction to employment after a career introduction to provide better opportunities for women with small children.⁵⁹

10.32 The example was given of medical research institutes and the point was made that a career break had a significant impact.⁶⁰ The comment was made that discrimination was wide spread in the scientific community and that women who had not had career breaks were still not promoted.⁶¹ This could partly be addressed by more transparency in the allocation of funding⁶² but it was suggested that 50 per cent of senior scientists were 'resistant to addressing the gender issue' as they did not see it as an issue.⁶³ In the scientific field there was limited part time work available notwithstanding evidence that productivity was not proportionately reduced with the number of hours.⁶⁴

... Women want access to part time, but it has got to be the right type of part time.⁶⁵

10.33 Further the New South Wales Office for Women's Policy comment on the difficulties in moving between part time and full time work because of the occupational segregation and the different nature of work with reduced hours to full time work.⁶⁶

Many women express a preference for part time work, it is important to note the constraints that exist on their range of employment choices and options. Likewise, if the work available on a part time basis does not reflect a woman's skills and provide

59 Howard Florey Institute, *Supplementary Submission No. 88.1*, p. 2.

60 Dr Siew Chai, Senior Research Fellow, Howard Florey Institute, *Transcript of Evidence*, 3 April 2009, p. 41.

61 Dr Siew Chai, Senior Research Fellow, Howard Florey Institute, *Transcript of Evidence*, 3 April 2009, p. 42; Dr Elisa Hill, Senior Research Officer, Howard Florey Institute, *Transcript of Evidence*, 3 April 2009, p. 42.

62 Dr Elisa Hill, Senior Research Officer, Howard Florey Institute, *Transcript of Evidence*, 3 April 2009, p. 43.

63 Dr Siew Chai, Senior Research Fellow, Howard Florey Institute, *Transcript of Evidence*, 3 April 2009, p. 49.

64 Dr Siew Chai, Senior Research Fellow, Howard Florey Institute, *Transcript of Evidence*, 3 April 2009, p. 49.

65 Miss Sophie Ismail, Industrial Officer, Queensland and Northern Territory Branch, Independent Education Union of Australia, *Transcript of Evidence*, 31 March 2009, p. 30.

66 New South Wales Office for Women's Policy, *Submission No. 153*, pp. 17-18.

career development opportunities, these constrained choices can lead to sub-optimal labour market outcomes.⁶⁷

- 10.34 Women nearing retirement or retired may have extensive experience but may prefer to work part time. Women Into Politics would like to see more community awareness of the potential contribution of older women.⁶⁸ WIRE also raised the issue of ageism for older women and the increased difficulty in re-enter the workforce.⁶⁹
- 10.35 Women can be limited to 'part-time, menial, physically demanding work, when they would prefer full time work where they can use their intellectual and managerial abilities'.⁷⁰

Flexible working arrangements

- 10.36 The Australian Institute of Management Victoria and Tasmania saw flexible working arrangements as one of the emerging issues and that the business sector has not fully engaged in this issue.⁷¹ Flexibility can work to the benefit of the employee in situations of skills shortage and to the benefit of the employer in the opposite situation.⁷²

Women may be forced to 'choose' the flexibility of lower paying part time or casual work or not seek career advancement because of caring responsibilities. Often there are fewer opportunities for training and career development in part time or casual employment or in industries where these types of employment are widespread.⁷³

67 New South Wales Office for Women's Policy, *Submission No. 153*, p. 18.

68 Women Into Politics Inc, *Submission No. 49*, p. 1.

69 Ms Samira Douglas, Chief Executive Officer, WIRE - Women's Information, *Transcript of Evidence*, 2 April 2009, p. 90.

70 Name Withheld, *Submission 1*, p. 1.

71 Ms Susan Heron, Chief Executive Officer, Australian Institute of Management, Victoria and Tasmania, *Transcript of Evidence*, 4 December 2008, p. 1.

72 See Mr Andrew Cameron, Manager, Policy, Recruitment and Consulting Services Association, *Transcript of Evidence*, 24 October 2008, p. 36.

73 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 9.

- 10.37 Men do not take up family-friendly arrangements when they are available.⁷⁴ Research in the United Kingdom has shown that:

They found that women applied much more than men to vary their work arrangement and that when women applied they were much more likely to be accepted. The few men who applied were much more likely to be rejected. When they asked people who had availed themselves of the right to request what had happened, they also found that around about half of them said that they had suffered some negative consequence as a result. Because it is women who are accessing those flexible work arrangements, that then has gender implications. It means that when provisions are put into place there needs to be careful evaluation. Nobody expected that to happen; they thought, 'This is great: it is open to men and women.' On the face of it, there is absolutely no discrimination.⁷⁵

- 10.38 Flexibility is a two edged sword which has some desirable characteristics but can also 'convey information about a person's vulnerability in the working environment'.⁷⁶ It is difficult to arrange child care if the work hours are unknown and unreliable.

As long as taking advantage of progressive work life balance policies means forfeiting career aspirations and feeling that you are letting your work team down, the policy-practice gap in this area is likely to be wide.⁷⁷

- 10.39 Some employers have found a flexible approach to their advantage. For example, in addition to paid parental leave and part-time and job share positions, Port Stephens Council offers access to extended bereavement leave; ability to purchase additional annual leave; learning and development plans; financial assistance for formal studies; grandparent and community volunteer leave; and career break leave.⁷⁸

The introduction of flexible work arrangements is being recognised as a key strategy to increase female participation,

74 Ms Sandra Dann, Director, Working Women's Centre South Australia, *Transcript of Evidence*, 6 November 2008, p. 42.

75 Dr Sara Charlesworth, Research Fellow, Centre for Applied Social Research, *Transcript of Evidence*, 2 April 2002, p. 27.

76 Associate Professor Siobhan Austen, *Transcript of Evidence*, 5 November 2008, p. 23.

77 Windsor K, 2007, *Putting Pay equity into Practice – Pay Equity and the Productive Workplace. A case study of the NAB/FSU pay equity audit*, August 2007, p. 23 cited in Australian Education Union, *Submission No. 76*, p. 24.

78 Port Stephens Council, *Submission No. 48*, p. 4.

provide greater opportunities for women to work and make their skills available to employers. A recent survey of employee perception conducted by the Chamber of Commerce and Industry of Western Australia (CCI) found that the provision of more flexibility in the workplace is the single most important measure to attract and retain female workers.⁷⁹

10.40 The other finding in the United Kingdom was that:

Part timers were much more likely to avail themselves of it than full timers. That tells you two things: firstly, part-time work is not inherently flexible; and secondly, it also tells you that, if you are already seen as being on a non-career track, then you can afford to use those little flexibilities. But if you are serious about your career, even if you have provisions in the workplace - and there are lots of instances of that - people simply do not take them up.⁸⁰

10.41 The Chamber of Commerce and Industry of Western Australia commented that flexibility arrangement must be determined at the workplace level to ensure their practicality.⁸¹ Offers made with the best intentions may fail due to practicalities of the revised arrangements.

10.42 The Western Australian Chamber of Commerce survey found that women are 'finding it increasingly difficult to balance work and family responsibilities'.⁸² While 66 per cent of the 100 women surveyed by the Western Australian Chamber of Commerce and Industry expressed concern about pay equity, 82 per cent listed flexibility as the most important factor.⁸³ Flexible working hours is important for both genders with men taking a more active role in family caring responsibilities.⁸⁴

Flexible working arrangements provide a practical solution to address this issue without adversely affecting business. Flexible arrangements provide employees with more options as to when and how they complete their work, and greater opportunities for

79 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 9 citing Chamber of Commerce and Industry Western Australia. (2008), *Women in the Workforce: A Discussion Paper*, October, East Perth: CCI Economics, p. 42.

80 Dr Sara Charlesworth, Research Fellow, Centre for Applied Social Research, *Transcript of Evidence*, 2 April 2002, p. 27.

81 Chamber of Commerce and Industry of Western Australia, *Submission No. 72*, p. 16.

82 Ms Marcia Kuhne, Director, Workplace Relations Policy, Chamber of Commerce Western Australia, *Transcript of Evidence*, 5 November 2008, p. 43.

83 Mr Andrew Tillett, 'Gender pay gap widens in WA', *West Australian*, 29 October 2008, p. 12.

84 Chamber of Commerce and Industry of Western Australia, *Submission No. 72*, p. 15.

balancing work and family responsibilities, while at the same time ensuring that they continue to work their full hours.⁸⁵

- 10.43 The Australian Education Union commented that the improvements in flexibility polices over the last three decades which enable better work and family balance, has not had an impact of the gender wage gap.⁸⁶ In particular, flexibility in employment is a strong motivator for 21 to 30 year olds.⁸⁷ Younger men and women are more aware of the aspects that need to be changed and would be responsive to clear direction on how to best achieve these changes.⁸⁸

Once you relieve yourself of the notion that you are factory building widgets between nine and five, you actually realise that there is a whole lot of things you can do about flexibility of hours and arrangements and return from maternity leave and parental leave and so on. That is cultural reform.⁸⁹

- 10.44 The Human Rights and Equal Opportunity Commission report in 2007 found that 'One of the major barriers for men with family responsibilities that the Commission has identified is a lack of support within workplaces either in terms of lack of access to family-friendly policies such as flexible working arrangements and paid paternity/parental leave, or where there is access to such policies, family-hostile workplace cultures prevent their take up'.⁹⁰ The Department of Consumer and Employment Protection, Western Australia preliminary research has shown that:

- employees believed that employers were not supportive of work life balance, despite having numerous flexible working arrangement policies;
- women faced the most difficulty in varying their working hours to meet family or personal commitments;
- barriers to part time employment was the most prevalent issue facing women and mature aged employees; and

85 Chamber of Commerce and Industry of Western Australia, *Submission No. 72*, p. 15.

86 Australian Education Union, *Submission No. 76*, p. 7.

87 Mr Andrew Cameron, Manager, Policy, Recruitment and Consulting Services Association, *Transcript of Evidence*, 24 October 2008, p. 36.

88 Ms Susan Heron, Chief Executive Officer, Australian Institute of Management, Victoria and Tasmania, *Transcript of Evidence*, 4 December 2008, p. 3.

89 Mr Frank Quinlan, Australian Catholic Bishops Conference, *Transcript of Evidence*, 12 March 2009, p. 12.

90 Human Rights and equal Opportunity Commission, 2007, *It's about time: Women, men work and family*, p. 70.

- cultural norms, such as work demands and pressures, meant that most managers were unable to utilise work life balance policies.⁹¹

10.45 Smaller workplaces may not be in a position to offer part time opportunities.⁹² While in the restaurant industry engages a large proportion of part time worker as they engage people during the busy times and therefore because of the nature of the business, there is not a lot of potential flexibility that management can offer.⁹³

10.46 There needs to be research into the gap between flexibility policy and practice as managers may lack the confidence to implement this new agenda.⁹⁴

Simply having flexible arrangements in employment conditions is not enough. There is a need for substantial cultural change to ensure that women can choose to work fewer hours and still be considered for promotion or training.⁹⁵

10.47 The Finance Sector Union of Australia considered that flexibility policies could be rendered meaningless by excessive hour and workloads.⁹⁶

... providing more flexible work practices and access to those, while commendable, could become a trap for women and we think that there are enough of those within our industry and, indeed, our industry is often cited for its progress in this area. What we require is more certainty around hours of work, paid overtime and total pay ...⁹⁷

10.48 Work intensification can also result in training options being foregone.⁹⁸

Pay adequacy rather than equity (anecdotally) is the primary barrier to women taking up the flexibility options available to

91 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 40.

92 Shire of York, *Submission No.7*, p. 1.

93 Mr John Hart, Chief Executive Officer, Restaurant and Catering Australia, *Transcript of Evidence*, 1 April 2009, p. 54.

94 Ms Juliet Bourke, Chair, Equal Employment Opportunity Network of Australasia, *Transcript of Evidence*, 26 September 2008, p. 81.

95 Community and Public Sector Union, *Supplementary Submission No. 13.1*, p. 21.

96 Ms Susan Kenna, National Industrial Officer, Finance Sector Union of Australia, *Transcript of Evidence*, 3 April 2009, p. 29.

97 Ms Susan Kenna, National Industrial Officer, Finance Sector Union of Australia, *Transcript of Evidence*, 3 April 2009, p. 29.

98 Ms Susan Kenna, National Industrial Officer, Finance Sector Union of Australia, *Transcript of Evidence*, 3 April 2009, p. 34.

them. Ironically when pay adequacy issues are largely addressed by women moving to more senior levels in the organisation, there is traditionally less room to negotiate flexibility options due to the demands (real or perceived) of the work and roles, and a cultural belief that women shouldn't seek flexible work options if they are serious about demonstrating their commitment to their career.⁹⁹

Number of hours worked

10.49 Caution must be exercised in the interpretation of employment figures.

In Australia a lot of women work part time, a lot of men work full time, but if you have a look at the distribution against comparable countries like the Netherlands, which has one of the highest proportions of part-time work in the OECD, women work substantial part-time hours, between 25 to 35 hours, and men work what you would call standard full-time hours, between 35 to 40 hours. In Australia, women are clustered at the short hours end of work, men are clustered at the long hours end of full-time work. That has lots of ramifications for pay equity.¹⁰⁰

10.50 Research has shown that women working part time on shorter hours would like more hours while those working longer hours would like fewer hours.¹⁰¹

10.51 There needs to be more education as most women see work-life balance as parental leave.¹⁰² Business and Professional Women Australia commented that standard hours of employment only exist because that is the way it has been in the past and this can be challenged.¹⁰³ There is some capacity to provide flexibility in hours without automatically assuming part time is the solution.¹⁰⁴

99 City of Whitehorse, *Submission No. 89*, p. 2.

100 Dr Sara Charlesworth, Research Fellow, Centre for Applied Social Research, *Transcript of Evidence*, 2 April 2002, p. 24.

101 Dr Sara Charlesworth, Research Fellow, Centre for Applied Social Research, *Transcript of Evidence*, 2 April 2002, p. 24.

102 Mr Matthew Drinan, Manager, Research and Consulting, Australian Institute of Management New South Wales and Australian Capital Territory, *Transcript of Evidence*, 26 September 2008, p. 10.

103 Mrs Sandra Cook, Director of Policy, Business and Professional Women Australia, *Transcript of Evidence*, 5 November 2008, p. 5.

104 Dr Patricia Todd, Senior Lecturer, Industrial Relations and Human Resources and Co-Director, Consortium for Diversity at Work, Business School, University of Western Australia, *Transcript of Evidence*, 5 November 2008, p. 64.

- 10.52 If women were more aware of the full extent of factors then would make more informed decisions about which factors are important.

The less women work, the more the hours worked by men will increase. Better work-life balance is needed for both men and women, and this will require changes in policies that provide incentives for employers and employees. For example, the decision made by a woman returning after childbirth to work part time depends on education levels, family commitments, age, expectations of employers and employment policies.¹⁰⁵

- 10.53 Commissioner Elizabeth Broderick commented that 'if we had better pay equity, couples could make the choices that suit them'.¹⁰⁶

Unpaid and paid over-time

- 10.54 Recruiting and Consulting Service Association believes there is a trend to 'choosing an hour-by-hour form of engagement so that they know they will actually get paid for all the work that they do and there is no unpaid overtime'.¹⁰⁷ The Finance Sector Union of Australia suggested that 'there are millions of hours of overtime worked each week in the finance sector; approximately 40 per cent of these hours were unpaid'.¹⁰⁸

More thorough data needs to be collected that shows the amount of unpaid work performed by women. The census and ABS surveys do not adequately record the actual hours that people work. The census only asks people what hours they are paid to work. Surveys ask employers what hours their staffs work, but many would not know what hours they really do. Unpaid overtime goes largely unrecorded and unreported. Increasingly, Australians take work home in an attempt to seek some work-life balance.¹⁰⁹

- 10.55 Business and Professional Women Australia added that:

The trend towards more unpaid overtime and less paid overtime may also be affecting women more that it used to. Overtime

105 National Foundation for Australian Women, *Submission No. 94*, p. 14.

106 Commissioner Elizabeth Broderick, Sex Discrimination Commissioner, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, p. 16.

107 Mr Andrew Cameron, Manager, Policy, Recruitment and Consulting Services Association, *Transcript of Evidence*, 24 October 2008, p. 36.

108 Finance Sector Union of Australia, *Submission No. 122*, p. 3 citing Finance Sector Union, 2005, *Workforce Report*, Finance Sector Union of Australia, Melbourne.

109 BPW Australia, *Submission No. 117*, p. 1.

payment has declined since the 1990s and staff are increasingly required to take time off 'in lieu' of worked overtime. Increasingly, workloads make it impossible for staff to take the time off that is owed to them. The expectation of unpaid overtime as part of a contract that pays a high salary now extends to include low wage earners, and increasingly affects working women. Meetings are planned for times that previously would have been regarded as non-working hours; lunchbreaks disappear. For many women the expectation of long hours of work complicates their life, especially if they have dependents, are sole parents, or their partners work away, travel a lot or work shifts. Women carry more responsibility for children and elders, and it costs many women to work back – in car parking, childcare and worry. It steals time from their children, families and relaxation time and contributes to their already significant 'time poverty'. Pocock suggests that recognition of such impacts must be taken into account in negotiation of wages and working conditions.¹¹⁰

- 10.56 Because information on unpaid overtime is not available, this needs to be addressed if you are to achieve true pay equity.¹¹¹ An example of this is non government organisations where the organisation is fund to a particular level but invariably the employees do many more hours than they are paid for.
- 10.57 Also men tend to do a lot more overtime than women and a greater proportion of men than women are working 40 to 60 hours per week.¹¹² The Diversity Council Australia Limited found that 'access to less overtime, over-award and other benefits accounts for 9.6 per cent of the gap'.¹¹³
- 10.58 The Port Stephens Council have incorporate the commitment to equity and family work life balance in the Values, Rights and Commitments section of the enterprise agreement and have instigated a number of approaches to ensuring employees have 'fulfilling, varied and better paid work'.¹¹⁴

110 BPW Australia, *Submission No. 117*, p. 2.

111 Mrs Sandra Cook, Director of Policy, Business and Professional Women Australia, *Transcript of Evidence*, 5 November 2008, p. 10.

112 Mr Michael Gerrity, Assistant Director, Australian Bureau of Statistics, *Transcript if Evidence*, 13 November 2009, pp. 3, 14.

113 Ms Nareen Young, Executive Director, Diversity Council Australia Ltd, *Transcript of Evidence*, 26 September 2008, p. 34.

114 Port Stephens Council, *Submission No. 48*, p. 3.

Indigenous women

- 10.59 The Working Women's Centres (WWC) of South Australia and the Queensland Working Women's Service stated that according to the 2001 Census, the mean gross household income for Indigenous persons was \$364 per week, or 62 per cent of the rate for non-Indigenous persons (\$585 per week).¹¹⁵
- 10.60 The WWCs continued that between the 1996 and 2001 Census, the average gross household income for Indigenous persons rose by 11% (after adjustment for inflation using the Consumer Price Index) compared with 13% for non-Indigenous persons.¹¹⁶ Thus as a consequence, the relative income disparity between Indigenous and non-Indigenous persons increased slightly over this period.
- 10.61 Also from the 2001 Census, of the 52% of Indigenous people aged 15 years and over who reported that they were participating in the labour force, the participation rate was higher for Indigenous men (60%) than Indigenous women (45%).¹¹⁷
- 10.62 Of significant concern the WWCs cited¹¹⁸ the ABS *Population Characteristics, Aboriginal and Torres Strait Islander Australians*, 2001 Census, where it was stated that

In 2001, Indigenous persons generally reported lower incomes than non-Indigenous persons in the same occupation. The median income of Indigenous managers was equal to 81% of the non-Indigenous median. Among professionals it was 73%, and among labourers it was 56%.¹¹⁹

Statistics for Indigenous women

- 10.63 The Industrial Relations Research Centre reported that with household surveys, 'sample sizes and definitional issues may restrict the collection of data about important issues such as the labour market experience of

115 Working Women's Centres South Australia and Northern Territory and the Queensland Working Women's Service, *Submission No. 119*, p. 14.

116 Working Women's Centres South Australia and Northern Territory and the Queensland Working Women's Service, *Submission No. 119*, p. 15.

117 Working Women's Centres South Australia and Northern Territory and the Queensland Working Women's Service, *Submission No. 119*, p. 15.

118 Working Women's Centres South Australia and Northern Territory and the Queensland Working Women's Service, *Submission No. 119*, p. 15.

119 Australian Bureau of Statistics, *Population characteristics: Aboriginal and Torres Strait Islander Australians 2001 (4713.0)*, p. 85.

Indigenous, culturally and linguistically diverse and immigrant women'.¹²⁰

- 10.64 The IRRC referred to the 2006 CEDAW country review of Australia, in which CEDAW

...was quite critical of Australian efforts in these fields [Indigenous culturally and linguistically diverse and immigrant women, and women with disabilities], as well as of Australia's record on refugees and trafficked women. One of its criticisms, though not specifically in the employment field, related to the thinness of available Australian data. Part of the process of improving Australia's human and labour rights record will thus be a system of better data collection.¹²¹

- 10.65 The Committee had hoped for further evidence to the inquiry with regard to Indigenous women and their participation in the workforce. However, evidence presented to the Committee further reinforced, that there is a lack of disaggregated statistical data on women in the workforce, more so for cases of multiple labour market disadvantage (such as Indigenous culturally and linguistically diverse and immigrant women, and women with disabilities).

Recommendation 55

That the Government as a matter of priority collect relevant information of workforce participation of Indigenous women to provide a basis for pay equity analysis and inform future policy direction.

Women with disabilities

- 10.66 Women With Disabilities Australia (WWDA) listed the barrier for women with disabilities participating the workforce as including 'discriminatory attitudes; poverty; non-optional costs of disability; inflexible work arrangements; inaccessible environments; experience of and vulnerability

120 Industrial Relations Research Centre, *Submission No. 109*, p. 2.

121 Industrial Relations Research Centre, *Submission No. 109*, p 4, citing UN CEDAW (2007) Committee on the Elimination of Discrimination against Women Thirty-fourth session 16 January-3 February 2006, available <http://www.fahcsia.gov.au/sa/women/pubs/govtint/cedaw_reports/Pages/CEDAWCommitteecomments2003report.aspx>, accessed 20 October 2009.

to violence; issues relating to transport, child care, attendant care; insecure housing'.¹²²

- 10.67 An important factor is the non-optional costs of disability and disability-related services and supports should not be linked to income.¹²³ Some women may not be able to afford to enter the paid labour market without the supports.¹²⁴
- 10.68 There is a disparity between the proportion of men and women with disabilities being assisted under the Federal government funded open employment services.¹²⁵

Poor quality part time work can be associated with more restricted career paths, poorer quality work opportunities, less secure employment, and more limited access to leave and other work related conditions. Women are less likely to have paid leave entitlements, with data suggesting that women constitute 66% of all casual employees working part time hours. In addition, significant periods of time in spent in part time and casual work can have a wage and superannuation penalty for women.¹²⁶

- 10.69 Women with Disabilities Australia commented that 'there has been virtually no improvement in the unemployment rate and/or labour participation rate of women with disabilities since 1997, in stark contrast to the improvements made for disabled men, non-disabled men and non-disabled women in the same period'.¹²⁷ Further, women with disabilities are over represented in poorly paid jobs and in the traditional areas of female employment, and women 'are given marginal jobs far below their capacity; and are denied opportunities for further training and job advancement'.¹²⁸

122 Women With Disabilities Australia, *Submission No. 44*, p. 5.

123 Women With Disabilities Australia, *Submission No. 44*, p. 6.

124 Women With Disabilities Australia, *Submission No. 44*, p. 6.

125 Women With Disabilities Australia, *Submission No. 44*, p. 7.

126 New South Wales Office for Women's Policy, *Submission No. 153*, p. 17 citing Pocock B, Skinner N and Williams P, *Work, Life and Time: The Australian Work and Life Index 2007*, Centre for Work +Life, University of South Australia, Adelaide, 2007. Australian Bureau of Statistics, *Employee Earnings, Benefits and Trade Union Membership*, cat. no. 6310.0 August 2008; Chalmers and Hill, op. cit.

127 Women With Disabilities Australia, *Submission No. 44*, p. 16.

128 Women With Disabilities Australia, *Submission No. 44*, p. 17; see also Fawcett G, 2000, *Bringing down the barriers: The labour market and Women with disabilities in Ontario*, Canadian Council on Social Development, Ottawa, Ontario.

10.70 For women with disabilities, there can be additional barriers including:

- unstable work patterns because of the episodic and/or fluctuating nature of the disability;
- negative social attitudes;
- the impact of poverty on the capacity to be job ready;
- lack of access to education and training; poor job design;
- inflexible work arrangements; lack of attendant care; inadequate or expensive transport;
- lack of, inaccessible and inflexible childcare;
- domestic and parenting duties;
- inaccessible and unresponsive employment services;
- restricted access to information and communication technologies;
- may include experience of abuse, violence and harassment;
- cost of equipment and assistive devices and inaccessible built environment;
- insecure housing and accommodation;
- lack of awareness about rights; and
- cost of disability and lack of portability of state funded programs.¹²⁹

10.71 A safe environment must be created for women to move from income support into employment:

As long as women with disabilities are required to pay for their own supports when they leave the relative safety of income support, the reality of their lives will create a huge barrier to labour force participation. Because of their greater likelihood of living alone or as a lone parent with almost total financial responsibility for themselves and their children, as well as much lower likelihood of earning a high wage if they were to find a job, women with disabilities are often those most adversely affected by the present system of linked disability-related supports and income support.¹³⁰

10.72 Women With Disabilities stressed the need to de-link disability related supports and income support to enable easier access to the labour market to address this.¹³¹ Further, for women with disabilities who utilise funded programs for their support, there can be additional barriers through the

129 Women With Disabilities Australia, *Submission No. 44*, pp. 11-15.

130 Women With Disabilities Australia, *Submission No. 44*, p. 17.

131 Women With Disabilities Australia, *Submission No. 44*, p. 17.

lack of portability between the states and territories depending on eligibility criteria and resource constraints.¹³²

...any strategies which aim to promote the employment of people with disabilities, require a clear sense of the reality of the situations that women with disabilities face, and a commitment to addressing the barriers that stand in the way of them participating in the labour market on an equal basis with others.¹³³

- 10.73 In January 2009, the Government announced an employer incentive scheme which will offer incentives for employers to employ people with disabilities and provide tailored assistance to jobseekers based on their level of disadvantage.¹³⁴ Also as discussed earlier in the chapter, the need for Public Service departments to report biennially on their gender duty in relation to policy implementation should incorporate information on what is available for women with disabilities and the effectiveness of those programs.

Recommendation 56

That the Government as a matter of priority collect relevant information of workforce participation of women to with disabilities provide a basis for pay equity analysis and inform future policy direction.

Women from non-English speaking backgrounds

- 10.74 Culturally and Linguistically Diverse women can experience multiple disadvantages and FECCA commented that CALD women are more often in the unsecured and lower wage jobs.¹³⁵

Compounding the situation is the lack of appropriate and available English language programs for certain groups of migrant women; issues surrounding accreditation of overseas

132 Women With Disabilities Australia, *Submission No. 44*, p. 15.

133 Women With Disabilities Australia, *Submission No. 44*, p. 19.

134 Australia's combined sixth and seventh report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, 2008, para 9.52.

135 Federation of Ethnic Communities' Councils of Australia, *Submission No. 50*, p. 2; Ms Voula Messimeri, Chair, Federation of Ethnic Communities Councils of Australia, *Transcript of Evidence*, 24 October 2008, p. 16.

qualifications; and lack of access to training and education options within regional areas.¹³⁶

10.75 The Victorian Equal Opportunity and Human Rights Commission and the Victorian Multicultural Commission have found evidence of indirect racial and religious discrimination in current employment practices.¹³⁷

10.76 Employment abuses in relation to guest workers have receive substantial media coverage and the point was made that:

Equitable treatment of immigrant women workers is less defined by Australia's obligations under international law. Unfortunately, despite being a net recipient of immigrant labour, Australia has not ratified any international treaties covering the rights of migrant workers. We submit that Australia should lead immigrant-recipient nations in ratifying the 1990 ILO *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.¹³⁸

10.77 On 14 September 2009 the *Migration Regulations 1994* were amended to support the commencement of the *Migration Legislation Amendment (Worker Protection) Act 2008* in relation to the sponsorship of non-citizens working in Australia including the equitable remuneration arrangements. This amendment requires that sponsors:

Ensure equivalent terms and conditions of employment for their sponsored persons (i.e. The sponsor must ensure that the terms and conditions of employment provided to a sponsored person are no less favourable than the terms and conditions they provide, or would provide, to an Australian citizen or an Australian permanent resident to perform equivalent work in the person's workplace at the same location).¹³⁹

136 Federation of Ethnic Communities' Councils of Australia, *Submission No. 50*, p. 2 citing the findings of Department of Victorian Communities, 2005, *Successworks*, CALD Women's Project.

137 Ms Voula Messimeri, Chair, Federation of Ethnic Communities Councils of Australia, *Transcript of Evidence*, 24 October 2008, p. 16.

138 Associate professor Taksa and Dr Anne Junor, *Submission No. 109*, p. 11.

139 Department of Immigration and Citizenship, 2009, *Additional information relating to regulation amendments to strengthen the integrity of the temporary skilled visa program, 14 September 2009 Legislation Change*, at <<http://www.immi.gov.au/legislation/amendments/2009/090914/lc14092009-05.htm>>

- 10.78 These equity issues can be exacerbated by' multiple disadvantages of ethnic background, language, culture and faith, on top of existing gender bias discrimination.¹⁴⁰ Culturally and linguistically diverse women are disadvantaged in negotiations because 'there is no longer a requirement that the provisions be explained in the community languages of the workplace as a condition for approval' which has resulted in a loss of protection.¹⁴¹ Five per cent of Australian have low-level English language proficiency and individualised workplace agreements have not been helpful to vulnerable people.¹⁴² This is dealt with in Chapter 5.

Language skills

- 10.79 Another aspect that can impact on migrant women's participation in the workforce is:

The erosion of English language tuition over the past 20 years, and strict guidelines governing timing of post-arrival access, have made access to English impossible for women with children. Status as spouse of a primary immigrant, ongoing issues of overseas skills recognition, loss of skills currency in fields such as IT and engineering, religious discrimination based on dress codes, and the low value given to fluency in other languages, have all been barriers to employment. The migrant resource centres, including women's centres, that flourished before 1995, have lost most of their funding. The upshot is a tendency to concentration in low-paid occupational segments, regardless of skill levels, and a denial of voice and organising capacity. To see these issues as matters to be addressed simply through safety net mechanisms is to compound the stereotyping of immigrant women by bundling them into one low-skilled category.¹⁴³

140 Ms Voula Messimeri, Chair, Federation of Ethnic Communities Councils of Australia, *Transcript of Evidence*, 24 October 2008, p. 16.

141 Associate Professor Taksa and Dr Anne Junor, *Submission No. 109*, p. 12.

142 Mr Peter van Vliet, Director, Federation of Ethnic Communities Councils of Australia, *Transcript of Evidence*, 24 October 2008, p. 18.

143 Associate Professor Taksa and Dr Anne Junor, *Submission No. 109*, pp. 11-12.

Recommendation 57

That the Minister for Immigration and Citizenship review the adequacy of English language tuition and the need to reinstate these programs.

International qualifications

- 10.80 Another aspect disadvantaging CALD workers is the delay in the recognition of overseas qualifications and FECCA suggested a more centralised and efficient system.¹⁴⁴

While there is an increasing number of CALD women emigrating with a high level of educational qualification and work skills, a lack of recognition of overseas qualifications for skilled migrant women presents a barrier to working within their field of expertise.¹⁴⁵

- 10.81 It is difficult to settle in a new country without the added stress of having to redo a degree:

... people come here with accounting degrees and then have to do an accounting degree again because the accounting degree is not recognised in Australia because that particular university or country does not have the accredited standards.¹⁴⁶

Recommendation 58

That the Minister for Immigration and Citizenship investigate options for the improvement of current processes for the accreditation of overseas migrants.

Access to training and education options within regional areas

- 10.82 There is also a role for government in assisting migrants to gain local experience through the provision of work experience in government departments or instrumentalities.¹⁴⁷

144 Ms Voula Messimeri, Chair, Federation of Ethnic Communities Councils of Australia, *Transcript of Evidence*, 24 October 2008, p. 19.

145 Federation of Ethnic Community Councils of Australia, *Submission No. 50*, p. 8.

146 Mr Peter van Vliet, Director, Federation of Ethnic Communities Councils of Australia, *Transcript of Evidence*, 24 October 2008, p. 21.

147 Mr Peter van Vliet, Director, Federation of Ethnic Communities Councils of Australia, *Transcript of Evidence*, 24 October 2008, p. 20.

Recommendation 59

That the Minister for Employment and Workplace Relations seek cooperation from the State and Territory Governments to develop opportunities for the provision of work experience in government departments or instrumentalities for migrant women

Employee rights

- 10.83 FECCA also called for a 'comprehensive public education program aimed at informing CALD communities about schemes such as the introduction of paid maternity leave through avenues such as community radio, ethno-specific organisations and migrant resource centres'.¹⁴⁸

Recommendation 60

That the Government ensure that CALD women receive the appropriate information about all employment related initiatives such as paid maternity leave.

Parental leave

- 10.84 The Productivity Commission released the report on 28 February 2009 on *Paid Parental Leave: Support for Parents with Newborn Children* and the Government is currently developing strategies for the introduction of these policies. The Paid Parental leave Scheme to be introduced from 1 January 2011 will largely adopt the recommendations of the Productivity Commission. Accordingly the Committee has not provided detailed comments in this report but acknowledge this is a key feature referred to in large proportion of the submissions to the inquiry.
- 10.85 Australia was the second last OECD country to implement a national paid maternity leave scheme. A study in the United Kingdom has found that 'not only the availability, but the duration and generosity of paid

148 Federation of Ethnic Community Councils of Australia, *Submission No. 50*, p. 7.

maternity leave affected the likelihood of mothers returning to their employer after the birth of a child'.¹⁴⁹

10.86 The ACT Government now also has leave for grandparents:

The recent introduction of Grandparental leave with up to 52 weeks leave without pay to be granted over a three year period to permanent full or part time staff and to long-term temporary staff who are immediate family grandparents, step-grandparents, grandparents through adoption or through their children taking parental responsibility under a law of a State or Territory.¹⁵⁰

10.87 While the benefits of the introduction of paid parental are obvious, there are still a number of issues.

10.88 The Kingsford Legal Centre has found that women feel vulnerable when pregnant and that:

because of the increased demands on income and the awareness that obtaining a new job will be much harder than continuing in an existing position. This gives employers greater bargaining power and many clients will recount ongoing harassment and loss of conditions which they endure in the hope of staying in employment. Participation in the workforce for these women is hence seriously compromised.¹⁵¹

10.89 In relation to the rights of women returning to work after maternity the Kingsford Legal Centre commented that there is a need for clear and thorough education about employers responsibilities:

Some of the things that we were very clear on from our experience with our clients were that employers often are not aware particularly of their obligations, especially small employers. They seem to either not be aware or not be able to deal with the issue when it comes up. They might not have turned their mind to it. They might not have thought about how they would deal with it. It puts them in quite a defensive position.¹⁵²

149 Association of Professional Engineers, Scientist, Managers, Australia, *Submission No. 121*, p. 32 citing Thornwaite L, 2002, Work family balance: international research on employee preferences Working Paper 79 from the Working Time Today Conference 16 August 2002, ACIRRT, University of Sydney at <<http://www.wrc.org.au/documents/WP79.pdf>>.

150 Australian Capital Territory Government, *Submission No. 92*, p. 6.

151 Kingsford Legal Centre, *Submission No. 142*, p. 3.

152 Ms Shirley Southgate, Principal Solicitor, Kingsford Legal Centre, *Transcript of Evidence*, 1 April 2009, p. 41.

- 10.90 The Kingsford Legal Centre would like to see an independent body to assess the workplace, provide advice to employers and under take any necessary prosecution of repeat offenders as currently the onus is on individuals to take action.¹⁵³ Individuals seeking individual remedies is not an effective approach to achieving systemic change.¹⁵⁴
- 10.91 Further, the Working Women's Centres pointed out that unpaid maternity leave does not count as service in the calculation of long service leave entitlements.¹⁵⁵

Also women under these stresses, may use up all their sick leave and recreational leave entitlements, meaning they are unable to be paid for further days of leave taken because of ill health or family commitments resulting in decreased income.¹⁵⁶

Table 10.3 Key Employment Statistics for Tourism NT

	2002/03	03/04	04/05	05/06	06/07
Total paid staff	98	128	149	133	133
% female	84	86	81	74	77
Miscellaneous leave days	NA	NA	8.2	13.1	27.8

- 10.92 Tourism NT provided the above table to illustrate the impact of miscellaneous leave entitlements on organisations.¹⁵⁷

Day care and after school care

- 10.93 Many submissions referred to the need for accessible affordable and appropriate child care as a significant issue for mothers attempting to find permanent or part-time casual employment.¹⁵⁸ The limited range available and cost of child care can impact on the decision to return to work.¹⁵⁹

153 Ms Shirley Southgate, Principal Solicitor, Kingsford Legal Centre, *Transcript of Evidence*, 1 April 2009, p. 42.

154 Ms Shirley Southgate, Principal Solicitor, Kingsford Legal Centre, *Transcript of Evidence*, 1 April 2009, p. 42.

155 Working Women's Centres, *Submission No. 119*, p. 10.

156 Name Withheld, *Submission 1*, p. 1.

157 Tourism NT, *Submission 25*, p. 2. Miscellaneous leave includes parental leave, jury duty and leave without pay.

158 Name Withheld, *Submission No. 1*, p. 1; National Council of Women of Australia, *Submission No. 37*, p. 6; Ms Marie Coleman, Chair, Social Policy Committee, National Foundation for Australian Women, *Transcript of Evidence*, 27 November 2008, p. 2; Fuji Xerox Australia,

10.94 DEEWR defined childcare as:

arrangements made for the care of children under 12 years of age. Formal care is regulated child care away from the child's home. Informal care is non-regulated child care either in the child's home or elsewhere.¹⁶⁰

10.95 DEEWR listed the main types of Commonwealth support for childcare as:

- direct financial assistance to families to help reduce the cost of care (Child Care Benefit (CCB) and Child Care Tax Rebate (CCTR));
- financial assistance to certain types of child care services in terms of establishment and operating costs;
- funding of various quality assurance and professional support mechanisms for child care providers;
- extra support in remote and rural areas for both providers and families;
- extra support for those with special needs; and
- funding of various information services.¹⁶¹

10.96 Based on September 2007 data, the ABS reported that for almost a third of the number of women who were not in the labour force but wanted to work the main reason they were not working was due to caring for children.¹⁶²

10.97 Child care particularly in regional areas is a key factors in preventing women from returning to work and was described as 'falling neatly in the gap between government and companies' but it is a key consideration preventing people from returning to work.¹⁶³

As long as flexible work arrangements depends on an individual woman's ability to negotiate then it is unlikely that pay equity or

Submission No. 79, p. 6; National Council of Jewish Women of Australia Ltd, *Submission No. 81*, p. 4; Pharmacy Guild of Australia, *Submission No. 127*, p. 6.

159 Griffith Hack, *Submission No. 16*, p. 2; Security for Women, *Submission No. 17*, pp. 3, 5; Australian Bureau of Statistics (2007) *Australian Social Trends 2007. Labour Force Participation: an international Comparison*. ABS Cat. No. 4102.0; see also National Council of Women of Australia, *Submission No. 37*, p. 6.

160 Department of Education, Employment and Workplace Relations, *Submission No. 58.3*, p. 4.

161 Department of Education, Employment and Workplace Relations, *Submission No. 58.3*, p. 4.

162 Australian Bureau of Statistics, *Submission No. 132*, p. 21.

163 Ms Donna Frater, Chair, Women in Mining Network, Australasian Institute of Mining and Metallurgy, *Transcript of Evidence*, 2 April 2009, p. 65.

equitable working conditions will be obtained. The ability to negotiate can be diminished by numerous external factors such as the availability and affordability of childcare, after school care provisions as well as individual personal communication skills and knowledge.¹⁶⁴

10.98 The Australian Institute of Mining and Metallurgy argued that the lack of available of child care is exacerbated in rural and regional areas. The Institute recommended several measures involving government and business to address the issue of child care including:

- extending Fringe Benefits Tax exemptions to all employer sponsored child care costs, not just employer-run child care centres;
- ensuring funding of adequate child care facilities in regional and remote areas particularly where there is projected growth;
- encouraging partnership arrangements between business and child care centres or family day care providers for centres to provide services compatible with mining rosters; and
- encouraging employers to jointly operate child care centres for employees.¹⁶⁵

10.99 As the provision of child care continues to be a barrier to women participating in the workforce, the Government in cooperation with employers should work towards a system of child care that provides women with the greatest opportunity to enter, or re-enter, the workforce.

Recommendation 61

That the Government review existing policies to encourage and assist employers in the provision of child care facilities.

10.100 In countries where there are better child care arrangements, there is a significantly higher participation rate of women in the workforce.¹⁶⁶ The European approach to child care is much more flexible and the cost of

164 BPW Australia, *Submission No. 117*, p. 3.

165 Australian Institute of Mining and Metallurgy, *Submission No. 139*.

166 Commissioner Susan Booth, Anti-Discrimination Commission Queensland, *Transcript of Evidence*, 31 March 2009, p. 79.

child care is based on household income.¹⁶⁷ There is a higher birth rate in countries which provide good social supports to families.¹⁶⁸ There is the need to:

... change the culture of where people have huge slabs of time away from the workplace, but making the workplace so much easier for people to stay in and want to be in, and able to manage in.¹⁶⁹

- 10.101 Although Australia and Canada have many similarities in social, demographic and economic characteristics, Canada has a higher workforce participation rate for women.¹⁷⁰ Australia's part-time work rates are almost double those of Canada:

Canada giving tax deductions for childcare costs going back at least a decade. So the first comment I would make is that the introduction of those measures in Australia recently is likely to be beneficial. They have a bite, especially in terms of women's financial rewards from moving from part-time to full-time work.

Secondly, maternity leave is another critical difference between the two countries. Canada is rated as a country with amongst the most generous maternity and paternity leave provisions ... The available international research evidence suggests that that is promoting continued involvement in paid work for women.¹⁷¹

- 10.102 The unequal sharing of caring and other work household reflect the expectation of Australians.¹⁷²

In Australia we have a very ambivalent view about women in the paid workforce. We think, yes, it is good that women work, but we do not really think it should be their prime concern: 'Yes, they should work, and maybe part time is okay, but their prime business is really looking after the family.' That attitude is not only

167 Dr Elisa Hill, Senior Research Officer, Howard Florey Institute, *Transcript of Evidence*, 3 April 2009, p. 40.

168 Ms Susan Booth, Commissioner, Anti-Discrimination Commission Queensland, *Transcript of Evidence*, 31 March 2009, p. 81; see also Dr Christine Short, *Transcript of Evidence*, 19 March 2009, p. 5.

169 Commissioner Susan Booth, Anti-Discrimination Commission Queensland, *Transcript of Evidence*, 31 March 2009, p. 81.

170 Associate Professor Siobhan Austen, *Transcript of Evidence*, 5 November 2008, p. 16; Associate Professor Siobhan Austen, *Submission No. 126*, p. 7.

171 Associate Professor Siobhan Austen, *Transcript of Evidence*, 5 November 2008, p. 16; Associate Professor Siobhan Austen, *Submission No. 126*, p. 7.

172 Dr Sara Charlesworth, Research Fellow, Centre for Applied Social Research, *Transcript of Evidence*, 2 April 2002, p. 24.

societal; it is very much there in the workplace. In terms of current discussions about downsizing of workplaces, I think one of the very real risks is that there is an assumption that, whatever else we do, we must preserve those traditional male breadwinner models.¹⁷³

- 10.103 The Australian Bureau for Statistics commented that it is the age of the youngest child that determines the number of hours the mother will work.¹⁷⁴ It is usually women who change their working patterns to look after primary aged school children but after-school-hours care ceases for children in secondary school.¹⁷⁵ A survey conducted by the Pharmacy Guild of Australia listed as the major barrier to women's participation in the workforce as, child care and maternity leave and, employment flexibility as significant barriers but pay equity and continuing professional education were not seen as insurmountable barriers.¹⁷⁶
- 10.104 A Newspoll national survey of 526 parents, conducted for the National Foundation for Australian Women, reported the priorities of parents balancing work and child care are more flexible work conditions for themselves and their partners and access to school vacation programs.¹⁷⁷
- 10.105 Out-of-school care is a barrier to supporting women wishes to re enter the workforce.¹⁷⁸ Currently the system does not accommodate appropriate activities for older children and would be improved if out-of-school facilities included quiet facilities which could operate as homework centres.¹⁷⁹
- 10.106 In 2005, the Australian Bureau of Statistics Child Care Survey identified a need for additional before and after school care, long day care and occasional care.¹⁸⁰ There must be an age appropriate range of services.¹⁸¹

173 Dr Sara Charlesworth, Research Fellow, Centre for Applied Social Research, *Transcript of Evidence*, 2 April 2002, p. 24.

174 Ms Sue Taylor, Director, Labour Market Statistics Section, Australian Bureau of Statistics, *Transcript of Evidence*, 13 November 2009, p. 15.

175 Ms Samira Douglas, Chief Executive Officer, WIRE - Women's Information Centre, *Transcript of Evidence*, 2 April 2009, p. 87.

176 Pharmacy Guild of Australia, *Supplementary Submission No 127.1*, p. 1.

177 National Foundation for Australian Women, *Home Alone*, Media Release, November 2008, p. 1; *Out of School Hours Care Study*, Newspoll survey conducted for NFAW, August 2008, pp. 1-35.

178 Ms Samira Douglas, Chief Executive Officer, WIRE - Women's Information Centre, *Transcript of Evidence*, 2 April 2009, p. 86.

179 Ms Samira Douglas, Chief Executive Officer, WIRE - Women's Information Centre, *Transcript of Evidence*, 2 April 2009, p. 89.

180 Security for Women, *Submission No. 17*, pp. 2-3.

Australian women with children report that child care availability/accessibility (including care for children of school age) is the main reason they do not seek paid work or (have a) disincentive to increase their hours of paid work.¹⁸²

- 10.107 Of the 4 664 700 female employees in June 2008, 1 397 500 had children under 15 years of age.¹⁸³ There is a lack of data on care arrangements for older children or on the benefits of outside-school-hours care.¹⁸⁴ Security for Women commented on the emphasis on care arrangement for infants and preschool children and added that there is lack of availability of affordable, accessible, acceptable quality care for school aged children (6-15 years) out of school hours.¹⁸⁵
- 10.108 Another strategy was suggested by Women Into Politics who supported encouraging employers to allow some hours to be worked from home.¹⁸⁶ The Brisbane City Council for example has a workplace agreement that enables workers to work from home the hours of their choice outside normal business hours to suit their individual circumstances at ordinary rates of pay.¹⁸⁷ If the employer request they work outside normal business hours, then penalty wage rates apply.¹⁸⁸ However, the Chamber of Commerce and Industry Western Australia has found that there is a degree of nervousness among some employers because of the potential for occupational health and safety issues.¹⁸⁹

Government responsibilities

- 10.109 The Commonwealth agencies responsible for policy development for out of school care are the Department of Education, Employment and Workplace Relations and the Australian Sports Commission. Portfolio responsible is with the Parliamentary Secretary for Early Childhood

181 Ms Marie Coleman, Chair, Social Policy Committee, National Foundation for Australian Women, *Transcript of Evidence*, 27 November 2008, p. 2.

182 Security for Women, *Submission No. 17*, p. 5 citing Australian Bureau of Statistics (2007) *Barriers and Incentives to Labour Force Participation*, Australia, July 2006 to June 2007 ABS Cat No. 6239.0.

183 Security for Women, *Submission No. 17*, p. 1.

184 Ms Marie Coleman, Chair, Social Policy Committee, National Foundation for Australian Women, *Transcript of Evidence*, 27 November 2008, pp. 3-4.

185 Security for Women, *Submission No. 17*, p. 2; see also National Foundation for Australian Women, *Submission No. 94*, p. 8.

186 Women Into Politics Inc, *Submission No. 49*, p. 1.

187 Brisbane City Council, *Submission No. 23*, p. 4.

188 Brisbane City Council, *Submission No. 23*, p. 4.

189 Ms Marcia Kuhne, Director, Workplace Relations Policy, Chamber of Commerce Western Australia, *Transcript of Evidence*, 5 November 2008, p. 51.

Education and Care is with the Prime Minister and the Minister for Youth and Sport is within the Health and Ageing. Security for Women expressed the view that 'this arrangement fails to provide adequate Ministerial focus on the issues surrounding appropriate care during term and vacation times for children and young people of school age.¹⁹⁰ Security for Women suggested that the Ministerial arrangements at the Federal level be reviewed to provide a clear focus on out of school care and that placing the issue on the COAG agenda may improve cooperation.¹⁹¹

Recommendation 62

That the Government assign the responsibility out of school care to a specific portfolio to provide a focus for policy development and consideration and cooperation with the States and Territories.

10.110 The State and Territory governments have responsibility for registration and quality control of programs for out of school hours and the arrangements for Commonwealth support vary with the jurisdiction.¹⁹² The Commonwealth National Child Care Accreditation has a quality assurance program for those eligible to receive the Commonwealth Child Care Benefit, however, parents can claim the benefit through Centrelink¹⁹³ or the tax concessions available.¹⁹⁴

Parents wishing to use non-registered services which may be more suited to the age and needs, and attractive to the preferences of slightly older school aged children – adventure, sport, arts, theatre, music, culture, amongst other interest areas – are not able to access any of these benefits or payments to defray costs to the parent.¹⁹⁵

190 Security for Women, *Submission No. 17*, p. 7.

191 Security for Women, *Submission No. 17*, p. 15.

192 Security for Women, *Submission No. 17*, p. 7; Ms Marie Coleman, Chair, Social Policy Committee, National Foundation for Australian Women, *Transcript of Evidence*, 27 November 2008, p. 2.

193 Security for Women, *Submission No. 17*, pp. 7-8.

194 Ms Marie Coleman, Chair, Social Policy Committee, National Foundation for Australian Women, *Transcript of Evidence*, 27 November 2008, p. 2.

195 Security for Women, *Submission No. 17*, p. 8.

- 10.111 Security for Women suggested that OSHC services be expanded; that there be additional resources and:

The inadequacy of OSHC including services for young people up to school leaving age be recognised as a major disadvantage to women's workforce participation and career development.¹⁹⁶

- 10.112 In 2007, the Human Rights and Equal Opportunity Commission recommended that State and Territory governments:

... introduce a scheme of financial incentives for primary and secondary schools to introduce outside school hours activities with the aim of enabling all schools to be able to offer education and care to school aged children under the age of 16 during the hours of 8.00 am to 6.00 pm.¹⁹⁷

- 10.113 Further, in 2007 HREOC recommended that federal, state and territory governments:

Offer coordinated grant based funding for community based organisations, school and children's services to establish innovative projects which provide age appropriate activities for high school aged children and young people before and after school and during school holidays.¹⁹⁸

- 10.114 Further, child care may not be available during the times when training is available those studying part-time, particularly those wishing to return to work full time.¹⁹⁹ Particular emphasis was placed on those requiring child care services for those who work irregular hours.²⁰⁰ For parents who are working, there is inadequate programs available for children with disabilities.²⁰¹

- 10.115 On 28 February 2008, a New South Wales Parliamentary Committee commenced an inquiry into 'Children and Young People 9-14 years in NSW' which will investigate these issues in that jurisdiction. Evidence to

196 Security for Women, *Submission No. 17*, p. 15.

197 Human Rights and Equal Opportunity Commission, 2007, *It's About Time: Women, Men, Work and Family*, Recommendation 36, p. 165.

198 Human Rights and Equal Opportunity Commission, 2007, *It's About Time: Women, Men, Work and Family Final Paper*, Recommendation 36, p. 165.

199 Name Withheld, *Submission No. 1*, p. 2.

200 National Council of Women of Australia, *Submission No. 37*, p. 4.

201 Ms Marie Coleman, Chair, Social Policy Committee, National Foundation for Australian Women, *Transcript of Evidence*, 27 November 2008, p. 3.

that inquiry commented that some parents send the children to local libraries after school in lieu of other child care arrangements.²⁰²

- 10.116 There is evidence that parents adjust their working hours to be home after school hours, therefore in terms of greater productivity:

If parents who are capable of greater workforce participation and seek that are impeded in doing it by the lack of access to affordable and locally accessible services then that is something that needs consideration.²⁰³

Job security

- 10.117 The National Council of Women of Australia saw job security as a key aspects in encouraging the constructive participation of women in the labour market.²⁰⁴ Women value job security most highly.²⁰⁵ Women tend to stay with one employer longer than men.

The disproportionate representation of women in casual and part time employment is strongly linked to their primary responsibility for unpaid work in the home, caring responsibilities and associated breaks from paid employment ... However, the prevalence of women in insecure part time work in low paid jobs and industries is a cause for concern.²⁰⁶

- 10.118 The economic rationale for the retention of women in the workforce is that there is 'a business imperative and it is linked to an ageing workforce and long-term skills shortages'.²⁰⁷ EOWA observed a trend in casuals being offered permanent part-time positions 'as an incentive to retain the investment that they have put into these people'.²⁰⁸ Tourism Alliance

202 See Ms Marie Coleman, Chair, Social Policy Committee, National Foundation for Australian Women, *Transcript of Evidence*, 27 November 2008, p. 7.

203 Ms Marie Coleman, Chair, Social Policy Committee, National Foundation for Australian Women, *Transcript of Evidence*, 27 November 2008, p. 10.

204 National Council of Women of Australia, *Submission No. 37*, p. 8.

205 Ms Sandra Dann, Director, Working Women's Centre South Australia, *Transcript of Evidence*, 6 November 2008, p. 42.

206 New South Wales Office for Women's Policy, *Submission No. 153*, p. 17.

207 Ms Susan Heron, Chief Executive Officer, Australian Institute of Management, Victoria and Tasmania, *Transcript of Evidence*, 4 December 2008, p. 1.

208 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 28.

Victoria commented that seasonality is a major challenge for the tourism industry and that:

it has become apparent that finding and retaining skilled labour are consistent problems for tourism businesses. Bringing mothers back into the workforce after maternity leave is vital for skill and knowledge retention. Re-integration of mothers into the workforce and better support of flexible employment arrangements (such as more affordable and available child-care) are essential for increasing mothers' participation in the workforce.²⁰⁹

Skills development and training

10.119 Pay inequality and other discriminatory work conditions affect worker's choice in complex ways and 'can be too easily dismissed with the claim that it is an inevitable consequence of women's own preferences for reduced hours of paid work while their children are young'.²¹⁰ In relation to training EOWA has found that 35 per cent of women were dissatisfied with the career paths provided by employers and 16 per cent would like to see more learning and development opportunities.²¹¹

Compared with full time work, part time jobs have been found to be lower paid; heavily casualised thereby excluding part time employees from standard employment benefits; have fewer protective rights; are less secure; and lack access to training and career development opportunities.²¹²

10.120 The Brisbane City Council suggested that 'it would be beneficial to run a government sponsored education campaign focussed on providing fair access to training and promotion for employees who have flexible work arrangements such as reduced hours.'²¹³ Another suggestion was to include

209 Tourism Alliance Victoria, *Submission No. 129*, p. 2.

210 Human Rights and Equal Opportunity Commission, 2007 *It's About Time Women, men, work and family Final Paper 2007*, p. 80.

211 Equal Opportunity for Women in the Workplace Agency, *Generation F: Attract, Engage, Retain, 2008, Australian Government*, p. 20.

212 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 43 citing Charlesworth S and Whittenbury K, 2007, 'Part-time and Part-committed?': The Challenges of Part-time Work in Policing', *The Journal of Industrial Relations*, 49(1), pp. 31-47; Todd P, Binns J, and Eveline J, 2007, 'Work/Life Balance: It's now management's problem?' Paper presented to 5th Gender, Work and Organization Conference, Keele University, UK June 22-24.

213 Brisbane City Council, *Submission No. 23*, p. 3.

additional categories in the National Work and Family Awards on father friendly policies and carer friendly workplaces.²¹⁴ The Warringah Council suggested a 're-introduction' process following a period away from work:

This could include programmed training activities to revitalise skills and knowledge relevant to job success and reinforcing employee self-confidence, as well as options such as flexibility in how and when training is offered to women, so that family responsibilities are not unduly compromised.²¹⁵

10.121 Flexibility including the full range of employment options and education for older workers are important for those wishing to re enter the workforce.²¹⁶ Businesses are encouraged

... to run training and development programs for all women who are returning to the workforce and to ensure that there are education and training opportunities for women to advance in their careers and to understand what opportunities might be available to them.²¹⁷

10.122 A study in Western Australia found that women do not have equal access to training because there is less training in feminised industries although there was more training at higher levels and employers tend to provide training for fulltime and permanent employees.²¹⁸ Department of Consumer and Employment Protection, Western Australia referred to:

A lack of career progression and training is a key cause of the gender pay gap. Access to training and other career development opportunities such as quality part time work plays an important role in career progression and pay determination. One of the fundamental strategies for improving pay equity is improving women's workplace experience and this is influenced by the level of acceptance of the way women's careers interact with their child rearing responsibilities.²¹⁹

214 Human Rights and Equal Opportunity Commission, 2007 *It's About Time Women, men, work and family Final Paper 2007*, p. xx.

215 Warringah Council, *Submission No. 28*, pp. 1-2.

216 Ms Marcia Kuhne, Director, Workplace Relations Policy, Chamber of Commerce Western Australia, *Transcript of Evidence*, 5 November 2008, p. 44.

217 Ms Marcia Kuhne, Director, Workplace Relations Policy, Chamber of Commerce Western Australia, *Transcript of Evidence*, 5 November 2008, p. 45.

218 Equal Opportunity Commission of Western Australia, *Submission No. 131*, pp. 12- 13 citing Todd T and Eveline J, 2004, *Report on the review of the gender pay gap in Western Australia*, p. 40.

219 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 38.

10.123 The University of Western Sydney made the point that:

The effectiveness of training available to women is also an important consideration. Organisational training audits, such as that undertaken at UWS, may reveal that women are accessing training and other professional development opportunities, but are neither progressing in their career nor earning comparable wages to their male counterparts.²²⁰

10.124 Further, the Diversity Council Australia believes that:

Women are more likely to access training opportunities which help them undertake their current role better rather than position them for promotion and therefore higher remuneration. Additionally, women are more likely to rely on flexible work arrangements including part-time work. Such roles have less access to training and development, which in turn reduces women's opportunities to access increased remuneration.²²¹

10.125 Dr Christine Short stated that:

The key stakeholders I interviewed certainly felt women did not receive fair access to training and promotion. The research I reviewed confirmed this opinion. Again this is an insidious effect of what is termed "doing gender" - society consciously or not feeling women who are also mothers should have their children as their main focus and do not belong in the workplace except in peripheral part time jobs. Current EEO legislation puts on the onus on individuals to bring cases against powerful employers and it is only the rare brave individual that puts themselves through the process. What we need is legislation that puts the onus on employers to show that they are providing as equal access to training and promotional opportunities to women as they do to men.²²²

10.126 The Local Government Association of Queensland commented that:

... part-time people will not take up the training. That is because often they almost feel guilty: 'I'm only here three days a week and I'd feel guilty if I took one of those days and went and trained for myself.' We have to overcome those cultural issues. That is in the

220 University of Western Sydney, *Submission No. 86*, p. 4.

221 Diversity Council Australia, *Submission No. 110*, p. 8.

222 Dr Christine Short, *Submission No. 128*, p. 2.

minds of not just the managers, which is important, but also some of those people.²²³

- 10.127 Liquor, Hospitality and Miscellaneous Union, Queensland Branch commented that the current arrangements were unsatisfactory because they relied on the good will of the employer.²²⁴ The New South Wales Office for Women's Policy saw the 'award modernisation process being conducted by the AIRC is an opportunity to use the award system to promote training and skills development'.²²⁵ The NSW Office for Women's Policy noted that there are general training provisions in a number of NSW awards.²²⁶ and commented that:

Industry-based awards should contain a comprehensive range of provisions dealing with hours, wages, reimbursements, training allowances and on-the-job training, as well as the employment of apprentices and trainees.²²⁷

- 10.128 The New South Wales Office for Women's Policy added that:

Further, we support the provision of adequate industrial arrangements in awards for training and the establishment of viable career paths, and consider that the award modernisation process offers opportunities to achieve this. Where there are existing training provisions in Notional Agreements Preserving a State Award (NAPSAs) we submit that these should be consolidated to make their importance clear and their meaning readily understood.²²⁸

- 10.129 The Department of Consumer and Employment Protection, Western Australia commented that:

Career progression for women may be restricted by a lack of training and development opportunities. Organisations may need to place emphasis on all employees, including part time employees, undertaking training and development opportunities that are not just relevant to their current position, but also to future career development and promotional roles. The availability of training and development opportunities should be widely

223 Mr Tony Goode, Director, Workforce and Organisational Services, Local Government Association of Queensland, *Transcript of Evidence*, 31 March 2009, p. 45.

224 Liquor, Hospitality and Miscellaneous Union, Queensland Branch, *Submission No. 138*, p. 4.

225 New South Wales Office for Women's Policy, *Submission No. 153*, p. 32.

226 New South Wales Office for Women's Policy, *Submission No. 153*, p. 32.

227 New South Wales Office for Women's Policy, *Submission No. 153*, p. 32.

228 New South Wales Office for Women's Policy, *Submission No. 153*, p. 6.

publicised to ensure that all employees are able to express an interest in participating. This helps to overcome possible inequity due to managerial assumptions about employee suitability, interest and availability for training.²²⁹

Promotional opportunities

10.130 One of the factors that women consider to enter or re-enter the workforce.

The causes of poor career progression amongst part-time women, and women utilising flexible work practices to balance work with family responsibilities, were found to be varied, complex and ingrained and included the poor quality of many part-time jobs, lack of affordable child-care, and a workplace culture that rewards length of service and time-commitment over ability and merit. Ensuring that part-time work is not incompatible with career success is a key pay equity issue.²³⁰

10.131 A study by Cooklin *et al* found a lack of knowledge and a high level of misunderstanding among employers and employees in relation to women's rights at work when having children.²³¹

10.132 The New South Wales Office for Women's Policy commented that:

Gender pay inequities not only affect the *utilisation* of human capital and women's skills in the Australian labour market. Women's working patterns, gender segregation and systemic discrimination also affect women's *potential* in the labour market, and can see women disadvantaged in the acquisition of human capital. Accordingly, pay equity strategies that reduce gendered skill and human capital gaps, and improve the effective and competitive functioning of labour markets, can contribute to increasing the productive capacity of the economy.²³²

10.133 The University of Western Sydney commented that:

Career progression is often reliant on informal networking which tends to occur out of business hours without due consideration for

229 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 45.

230 Queensland Government, *Submission No. 135*, p. 18.

231 Cooklin A, Fisher J and Rowe H, 2007, 'Employee entitlements during pregnancy and maternal psychological well-being', *Australian and New Zealand Journal of Obstetrics and Gynaecology*, 47: 483-490 cited in Australian Catholic Bishops Conference, *Submission No. 64*, p. 4.

232 New South Wales Office for Women's Policy, *Submission No. 153*, p. 13.

the inability to participate of those with caring responsibilities. Ensuring that networking opportunities are available during times when women can participate, and actively encouraging women to take these experiences will increase women's opportunities of career advancement.²³³

10.134 In nursing there is an overrepresentation of males in management and administration roles but this can reflect a number of factors. There are fewer men and they may be more easily noticed, administrative work may be more appealing to men and they move away from bedside care and there is a preference for full time positions in management.²³⁴

10.135 However, in the education sector, the National Tertiary Education Industry Union reported a cluster of female employees at the lower levels of the general staff classification structure with women's access to promotion and senior positions remaining unequal.²³⁵

The promotion process is fraught with obstacles and difficulties for part-time employees. Many are anxious that to apply for a new position on a part-time basis places them at a disadvantage, particularly when traditional work organisation and traditional managers favour full-time work and full-time employees.²³⁶

10.136 This is not because women are not committed to their careers: women in higher education are just as career-oriented and ambitious as men. However, women are more likely to be working part-time than men, and to have breaks in employment, with negative influences on their chances for promotion. It is well established that interruptions in employment such as those for childbirth and child raising reduce women's attachment to the labour force and can be barriers to women's career progression. Clearly, these barriers have been working effectively to restrict women's access to senior university positions. Furthermore, explanations for women's disadvantage are multi-factoral, definitions of success and merit have largely been defined by men in academe, and women adjust their preferences in response to the barriers they face.²³⁷

233 University of Western Sydney, *Submission No. 86*, p. 4.

234 Ms Geraldine Kearney, Federal Secretary, Australian Nursing Federation, *Transcript of Evidence*, 24 October 2008, p. 26; Mr Nicholas Blake, Federal Industrial Officer, Australian Nursing Federation, *Transcript of Evidence*, 24 October 2008, p. 26.

235 National Tertiary Education Industry Union, *Submission No. 98*, p. 8.

236 *Policing and Quality Part-time Work: Constraints and Options*, Final Project Report: December 2007, RMIT University, p. 53.

237 National Tertiary Education Industry Union, *Submission No. 98*, p. 8 citing Probert B, Ewer P and Whiting K, 1998, *Gender Pay Equity In Australian Higher Education*; HREOC, 2002, *Valuing Parenthood: Options for Paid Maternity Leave*, Strachan G, Whitehouse G, Peetz D, Bailey J and

10.137 Government Skills Australia reported that in 2007, 46 per cent of women working part time in local government raised job selection and promotion as issues referring to the lack of career structures and part time work in senior positions.²³⁸ The Women in Local Government Management National Strategy has now been adopted by the Local Government Management Association in response to *National Framework for Women in Local Government – The Way Forward*.²³⁹

Attraction and retention

10.138 Employers now recognise attracting and retaining women in the workforce as an important business issue, however, the issues listed were:

- A lack of family friendly policies;
- Difficulties in returning to work after maternity leave, such as the availability of work at the same level skill level;
- Limited availability of quality part-time work;
- Problems faced by immigrant and refugee women, such as race discrimination;
- A lack of appropriate training and education for Indigenous women; and
- Limited opportunities and poor transport for women in regional and remote areas.²⁴⁰

10.139 Women's participation in the workforce is likely to increase over the next two decades²⁴¹ Honda Australia Motorcycle & Power Equipment Pty Ltd made the point that an organisation not employing people based on skills not gender 'will be at a distinct competitive disadvantage when trying to either employ or retain suitably qualified and skilled employees.'²⁴² The

Broadbent K, 2008, *Gender Equity in Universities: Should we be worried?* Paper presented to AIRAANZ Conference, Melbourne, February 2008; Bailyn L, 2003, 'Academic Careers and Gender equity: Lessons learnt from MIT', *Gender Work and Organisation* 10(2): 137-153; Leahy and Doughney, 2006, *Women Work and preference formation and Paid Employment* in G Schmid et al (eds) *International Handbook of Labour Market Policy and Evaluation*, Edward Elgar, Cheltenham, UK, pp. 348-378.

238 Government Skills Australia, *Submission No. 4*, pp. 1-2.

239 *National Framework for Women in Local Government – The Way Forward*.

240 Human Rights and Equal Opportunity Commission (2008) *Gender equality: What matters to Australian women and men, the Listening Tour Community Report*, p. 9.

241 Business Victoria at https://business.vic.gov.au/BUSVIC/STANDARD//pc=pc=PC_61636.html

242 Honda Australia Motorcycle & Power Equipment Pty Ltd, *Submission No. 5*, p. 2.

National Australia Bank in seeking to attract and retain the best talent looked to more flexible work practices.²⁴³

10.140 Mackay Sugar reported that during the labour shortages in the region, there has been an increase in the number of women applying for and accepting positions with the company, many in non-traditional areas.²⁴⁴

10.141 Women re-entering the workforce have additional skills learned in parenting and volunteering etc. Recognition of prior learning could assist many women wishing to return to the workforce, however, Dr Karmel commented that there are similar costs in properly assessing someone's skills and providing them with a course and the successful completion of the course can also boost their confidence.²⁴⁵ Women are not marketing their true competencies and do not seem to understand that this is the language of the workplace.²⁴⁶ There needs to be some sort of process to have the competencies recognised in a formal training sense. There is already a system in place where apprenticeship and traineeship organisations can go into the workplace and work through the competencies²⁴⁷ but this is after they have been employed. These assessments can be done for people not already employed.²⁴⁸

10.142 Whether the hours of employment suit the other commitments and responsibilities of potential employees.

In a recent Australian Human Resources Institute publication (September, 2008) nearly one in three respondents (28 per cent) observed that the career opportunities of employees in their organisation have at some stage been negatively affected by being a new parent or expecting a child. A total of 40 per cent of the sample reported unenthusiastically on practical return-to work arrangements for new mothers in their organization, while 28 per cent reported fair and a further 6 per cent said arrangements were non-existent. The survey showed that return to work practices varies significantly within an organisation depending on the

243 Ms Dorothy Hisgrove, Head, people and Change, National Australia Bank, *Transcript of Evidence*, 2 April 2009, p. 96.

244 Mackay Sugar Limited, *Submission No. 21*, p. 3.

245 Dr Thomas Karmel, Managing Director, National Centre for Vocational Education Research, *Transcript of Evidence*, 6 November 2008, p. 32

246 Ms Maidie Brockman, Member, Business and Professional Women Australia, *Transcript of Evidence*, 5 November 2008, p. 7.

247 Ms Maidie Brockman, Member, Business and Professional Women Australia, *Transcript of Evidence*, 5 November 2008, p. 14.

248 Ms Maidie Brockman, Member, Business and Professional Women Australia, *Transcript of Evidence*, 5 November 2008, p. 14.

relative enthusiasm of particular bosses. There are few requirements for employers to offer equal opportunity to women in these situations.²⁴⁹

- 10.143 Morgan Stanley Australia Ltd suggested the publication of a guide on taking maternity leave and the subsequent integration into the work environment.²⁵⁰ The Sims Group commented that:

The transition from employment to Maternity Leave and back to employment is a complex issue for all working mothers. Whilst employers are obligated to ensure employment is available, some females returning to work have concerns regarding 'going back into their old roles' particularly if those roles had historically been demanding and would not provide an acceptable level of work/life balance. If the demands on work/life balance for these employees have changed the capacity to return to a different role may be a more attractive option.²⁵¹

- 10.144 It may not be recognised that motherhood can assist in the development of efficiency and organisation skills. Further, returning to work can provide an opportunity 'to learn "new or different" skills, encourage and challenge "breaking out" to find new career paths/options' which may meet the needs of greater flexibility for women returning to work while providing 'meaningful, stimulating and "real"' roles.²⁵²

Retaining skilled workers

- 10.145 In addition to the raft of family friendly policies, the City of Melbourne has a Keep in Touch program to assist employees on parental leave to reintegrate and keep up with changes in the workplace.²⁵³ Another initiative for the City of Melbourne is that executive can spread the 14 weeks maternity pay over the year to enable them to retain the use of the company vehicle.²⁵⁴
- 10.146 The University of Central Queensland appreciates the need to attract and retain qualified staff and have in place policies and principles to support equality but career paths and participation rates of female academics are influenced by other factors such as balancing parenting and academia and

249 BPW Australia, *Submission No. 117*, p. 3.

250 Morgan Stanley, *Submission No. 95*, p. 2.

251 Sims Group, *Submission No. 46*, p. 2.

252 Sims Group, *Submission No. 46*, p. 2.

253 City of Melbourne, *Submission No. 11*, p. 1.

254 City of Melbourne, *Submission No. 11*, p. 1.

factors outside the direct control of the university.²⁵⁵ CQUniversity also emphasised the impact of market factors such as demand and supply of academics on remuneration levels:

CQUniversity currently has a number of positions that receive a market loading allowance including trades, technical support and IT positions. The reality is that CQUniversity operates in a domestically and globally competitive environment where skill shortages and staff attraction and retention factors can influence remuneration strategy.²⁵⁶

10.147 The reasons for women's departure from particular jobs may be for a number of reasons and is often not disclosed upon resignation.²⁵⁷

For those female employees who access parental leave, in most cases it was in their financial interest to remain out of the workforce rather than to return and pay their own child care fees. This affected the retention in the industry.²⁵⁸

10.148 Work by Grimshaw and Rubery (2007) in the United Kingdom found that:

One indication of a mismatch between quality of work and the respective wage is pervasive evidence across a variety of sectors that businesses face significant costs caused by high staff turnover and unfilled vacancies. Costs include: recruiting and inducting staff; difficulties meeting customer targets; loss of orders and intangible costs of loss of organisational memory; and costly temporary agency work to fill vacancies. DfES estimated average cost to employers of each leaver as 2,500 pounds for sales staff and 4,300 pounds for managers.

Existing staff, forced to cope with heavier workloads and low morale, feel resentful and eventually leave, perpetuating a downwards spiral (DfES 2002).²⁵⁹

10.149 Staff turnover can be expensive. In a survey of female workers conducted by the Chamber of Commerce and Industry of Western Australia in 2008,

255 CQUniversity Australia, *Submission No. 19*, pp. 1-2.

256 CQUniversity Australia, *Submission No. 19*, p. 3.

257 Ventura Bus Lines/National Bus Company, *Submission No. 30*, p. 1.

258 Ms Boyd, Organiser, Queensland Branch, Liquor, Hospitality and Miscellaneous Union, *Transcript of Evidence*, 31 March 2009, p. 16.

259 The National Pay Equity Coalition and the Women's Electoral Lobby Australia Inc, *Submission No. 118*, p. 18 citing Grimshaw D and Rubery J, 2007, *Undervaluing women's work*, European Work and Employment Research Centre, University of Manchester, Equal Opportunities Commission, Working paper Series No. 53, p. 121.

comparable pay was ranked second as a key issue for women in relation to attraction and retention of women in the workforce with flexible working hours ranked most important.²⁶⁰

- 10.150 Other factors ranked in order were career development, training and education, paid maternity leave, affordable child care, accessible child care facilities and salary sacrifice of child care expenses.²⁶¹

260 Chamber of Commerce and Industry of Western Australia, *Submission No. 72*, p. 14.

261 Chamber of Commerce and Industry of Western Australia, *Submission No. 72*, p. 15.

Pay equity as an issue has not really reached the level of debate or does not have a level of acceptance, knowledge or interest in society.¹

Cultural dimensions

...if people know about pay equity at all, they think it is equal pay.²

- 11.1 Gender pay equity is not well understood.³ There is a community perception that because there is equal pay for equal work that there is no problem and employers do not believe that pay equity is a concern in their industry.⁴
- 11.2 While most Australians know that women are paid less than men, the community in general and businesses in particular are not aware of the correct definition of pay equity:

... only 12% of people think pay equity means “equal pay for men and women doing different but equivalent jobs”. Nearly two thirds of people (63%) think it means “equal pay for men and women doing the same job” (a significantly more restrictive definition), whilst 26% of people did not know, or gave alternative incorrect answers.⁵

1 Commissioner Glenys Fisher, Queensland Industrial Relations Commission, *Transcript of Evidence*, 31 March 2009, p. 5.

2 Ms Jenness Gardner, Manager, Pay Equity Unit, Department of Commerce, Western Australian Government, *Transcript of Evidence*, 26 February 2009, p. 4.

3 Ms Sandra Dann, Director, Working Women’s Centre South Australia, *Transcript of Evidence*, 6 November 2008, p. 37; Dr Patricia Todd, Senior Lecturer, Industrial Relations and Human Resources and Co-Director, Consortium for Diversity at Work, Business School, University of Western Australia, *Transcript of Evidence*, 5 November 2008, p. 57; Victorian Government, *Submission No. 136*, p. 30.

4 Victorian Government, *Submission No. 136*, p. 30.

5 Diversity Council Australia, *Submission No. 110*, p. 11.

11.3 Research in Western Australia has shown that there is:

... a high level of awareness concerning the gender pay gap in Western Australia but a low level of awareness concerning the implications of this gap within individual organisations. It found that employers did not identify a correlation between the current challenges facing human resource management and the potential benefits of conducting a gender pay equity audit. Employers also had little knowledge about the materials and tools currently available to assist them in conducting gender pay equity audits. The report identified time resources and the potential negative impacts of audits as the primary barriers to conducting the audits.⁶

11.4 Pay equity is a complex and multifaceted issue. The Independent Education Union Australia (Qld and NT) stated:

It is extremely difficult to grasp the issues involved due to the fact that the causes of pay and equity inequality in the workplace generally are historical, social, economic and embedded in existing industrial, legal and social structures ... we believe that this is one of the primary factors impeding the achievement of pay equity; people do not understand the problem and you cannot solve a problem that you do not understand.⁷

11.5 The Diversity Council Australia Ltd saw the desired outcomes as:

... a community change with regard to how we view women's working patterns, that they are different but equal and valid to men's working patterns in the community. As a fundamental productivity issue for our country moving forward, we need to address the pay inequity issue.⁸

Community cultural challenge

11.6 The ACT Council of Social Service commented that:

It is arguable that even before women enter the workforce their aspirations are shaped by societal factors, including attitudes of parents, peers, schools and the media. For example, research has

6 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 27.

7 Miss Sophie Ismail, Industrial Officer, Queensland and Northern Territory Branch, Independent Education Union of Australia, *Transcript of Evidence*, 31 March 2009, p. 25.

8 Ms Nareen Young, Executive Director, Diversity Council Australia Ltd, *Transcript of Evidence*, 26 September 2008, p. 33.

shown that the more TV children watch, the more accepting they are of occupational gender stereotypes.⁹

- 11.7 Research by the Union Research Centre on Organisation and Technology over the life span revealed that there is a gender pay gap starting with children's pocket money:¹⁰

Table 11.1 A comparison of wages of males and females across their lifetime

Age (yrs)		Male	Female	Gender Gap
10	Pocket Money	\$7.60	\$6.80	89.5%
15	Part-time	\$9.38/hr	\$9.38/hr	100%
20	Delivery driver / sales assistant	\$856/week	\$623/week	72.8%
20	TAFE Qualifications	Technician \$18.68	Childcare \$15.81/hr	85%
40	Supervisor	\$26.42	\$21.32	81%
15	McDonald's part-time	\$7.43	\$7.43	100%
20	University students	Builder labourer \$15.39	Personal assistant \$15.71	102%
23	Public sector starting salary	Engineer \$54,000	Nurse \$45,000	83.4%
33		\$80,511	\$64,480	80%
45		\$112,107	\$75,868	67.5%
60		\$122,530	\$166,537	73.5%
Married couple				
	Bachelor of Education	Commence \$48,000	Commence \$47,000	98%
47		\$110,347	\$64,000	59%
55		\$135,079	\$77,546	57%

Source Union Research Centre on Organisation and Technology, Exhibit 76.

School curriculum

- 11.8 The Pay Equity Unit in Western Australia suggested that information on employment opportunities should commence before high school as girls

9 Hilary M Lips, *Blaming Women's Choices for the Gender Pay Gap*, Radford University, available at <<http://www.womensmedia.com/money/178-blaming-womens-choices-for-the-gender-pay-gap.html>>, viewed 1 October 2009.

10 Union Research Centre on Organisation and Technology, *Our sons, our daughters, Their very different futures*, April 2009, Exhibit 76.

exclude areas of further study or work at ages 8 or 9 years.¹¹ The choice of subjects at school can limit labour force options:

The AEU strongly believes there is a role here for educators and that clear careers advice and guidance is vital at an early stage in young people's lives. Post compulsory education and training, (and employment outcomes) are of course contributing to the gender segregated labour market ... It is argued that if these choices lead to different but equal outcomes then there is no problem: there are just different choices. If, however, such differences lead to better or poorer outcomes for particular groups, then it is important that such issues be explored and exposed.¹²

- 11.9 Northparkes Mines suggested that pay parity could be improved with more structured equal promotion of career opportunities to male and females at high school.¹³ Close the Gap in Scotland has also endeavoured to provide career information in schools, but cautioned that:

We encouraged the careers materials that go into schools and that schools buy to include gender equality aspects, and we also developed training for careers advisers on gender equality elements of their work which they consider when they go in and speak to schools, and individual pupils because every pupil in Scotland does get access to a careers adviser at some point during their education. What I would say though is that that level of access is minimal compared to the level of access that teachers and parents have. I think sometimes careers advisers in Scotland are unfairly blamed for occupational segregation when in reality they have a very short window of time to influence pupils' career choices.¹⁴

- 11.10 The National Foundation for Australian Women suggested the provision of school career programs incorporating wage prospects and financial planning.¹⁵ It was suggested that the New Opportunities for Women (NOW) program offered in TAFE has been able to empower the women involved and could provide a model to be provided in years 11 and 12 of high school:

11 Ms Jenness Gardner, Manager, Pay Equity Unit, Department of Commerce, Western Australian Government, *Transcript of Evidence*, 26 February 2009, p. 17; see also National Foundation for Australian Women, *Submission No. 94*, p. 7.

12 Australian Education Union, *Submission No. 76*, p. 22.

13 Northparkes Mines, *Submission No. 10*, p. 2.

14 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 9.

15 National Foundation for Australian Women, *Submission No. 94*, p. 15.

If we could give all the women and boys at school some of this information of how to negotiate, how to do job applications, how to identify jobs, how to analyse a job that is coming up, the right sorts of questions to ask of the employer and generally a much better understanding of what getting a job entails, we would give them more ammunition.¹⁶

- 11.11 EOWA also suggested a 'targeted education of young people in schools about the gender pay gap should be considered'.¹⁷ There is a lack of awareness about the existence of pay inequity and there needs to be education in schools as young women making choices about occupations are not aware of the problems.¹⁸ The Construction, Forestry, Mining and Energy Union would like to see educational awareness and careers advice on the occupations available. For example, a crane driver and those who operate sophisticated machinery on construction and mining sites are highly paid and this information should be available to those making career choices.¹⁹
- 11.12 Further, education in relation to discrimination could commence in schools in terms of appropriate behaviour and standards. The Australian Human Rights Commission provides school education kits and this approach could also be included in the curriculum.²⁰ The Equal Employment Opportunity Network of Australasia also called for students to be taught negotiation skills and provided with information about their rights as employees and avenues of information before they enter the workforce.²¹ The experience of the Kingsford Legal Centre is that young people do not seek legal advice and do not push for their rights.²² Business and Professional Women Australia advocated for the inclusion of training on the rights and responsibilities and how to negotiate a pay rise earlier in the school curriculum.²³

16 Ms Maidie Brockman, Member, Business and Professional Women Australia, *Transcript of Evidence*, 5 November 2008, p. 9.

17 Equal Opportunity for Women in the Workplace Agency, *Submission No. 113*, p. 22.

18 Dr Christine Short, *Transcript of Evidence*, 19 March 2009, p. 4.

19 Mr John Sutton, National Secretary, Construction, Forestry, Mining and Energy Union, *Transcript of Evidence*, 1 April 2009, p. 34.

20 Ms Shirley Southgate, Principal Solicitor, Kingsford Legal Centre, *Transcript of Evidence*, 1 April 2009, p. 46.

21 Equal Employment Opportunity Network of Australasia, *Submission No. 85*, p. 3.

22 Ms Shirley Southgate, Principal Solicitor, Kingsford Legal Centre, *Transcript of Evidence*, 1 April 2009, p. 46.

23 Mrs Sandra Cook, Director of Policy, Business and Professional Women Australia, *Transcript of Evidence*, 5 November 2008, p. 9.

- 11.13 Unless there is a grounding from the bottom up and high paid professions are presented differently, women will not choose them.²⁴ Research by Turner Zeller et al (2007) found that girls were unaware of job availability or pay rates for the career of their choice.²⁵
- 11.14 The National Council of Jewish Women endorsed this view:
- A deficient system of information dissemination and career 'guidance' tends to continue the promotion of highly feminized, and most often low paid, low skill requirement industries, to women from school age right through to older workers, as recommended study and work pathways.²⁶
- 11.15 The Australian Curriculum, Assessment and Reporting Authority is responsible for the development of Australia's national curriculum from Kindergarten to Year 12 for implementation from 2011. The curriculum will outline the essential skills, knowledge and capabilities that all young Australians are entitled to access, regardless of their social or economic background or the school they attend.
- 11.16 The *Australian Curriculum, Assessment and Reporting Authority Act 2008* requires that the Authority 'perform its functions and exercise its powers in accordance with any directions given to it by the Ministerial Council'. Accordingly the Committee recommends that:

Recommendation 63

That the Minister raise with the Ministerial Council of Education, Early Childhood Development and Youth Affairs a matter relating to review of curriculum and careers advice/course selection processes in all educational institutions for gender stereotyping.

24 Mrs Sandra Cook, Director of Policy, Business and Professional Women Australia, *Transcript of Evidence*, 5 November 2008, p. 11.

25 Turner-Zeller K and Butler E, 2007, Lifelong learning: Work related education and training: Meeting the needs of Australian Women at < http://www.wave.org.au/images/documents/lifelonglearningaug07_s4w.pdf > cited in Australian Education Union, *Submission No. 76*, p. 22.

26 National Council of Jewish Women of Australia Ltd, *Submission No. 81*, p. 5.

Higher education

11.17 University of Western Sydney commented that:

Within a higher education context, an opportunity also exists to incorporate education on gender pay equity and work value in the curriculum of management courses.²⁷

11.18 The Union Research on Organisation and Technology stressed the importance of the sex segregation of the Australian workforce and suggested a media campaign to inform undergraduates and post graduates of the potential outcomes of their career choices.²⁸

11.19 Research conducted by Turner-Zeller and Butler (2007) on the vocational education and training sector highlighted the need to:

- Provide quality advice and information about training pathways for women.
- Establish pre-enrolment recognition of prior learning that is accessible, relevant, not expensive or cumbersome and is well understood or publicised by VET. This is especially significant for older women, women returning to work and retraining.
- Include in training, where appropriate, work placements for women and courses for older women re-entering training.
- Offer training that is appropriately timed, flexible and appropriate for women, taking into account their career cycles.
- Include access to on the job training for women to support their skills development and transfer.
- Establish support services such as childcare, entry advice, course selection and career guidance services as part of regular operations.²⁹

11.20 The National Council of Jewish Women Australia commented that:

A whole of government approach to the VET system and its links to employment of women, including the development of gender sensitive research, planning, monitoring and reporting systems synthesizing local, state and national policy, is required to meet the needs of women and young girls' economic security and financial well being. This in turn, will enhance the nation's skill

27 University of Western Sydney, *Submission No. 86*, p. 3.

28 Ms Robyn Dale, Director, Union Research Centre on Organisation and Technology, *Transcript of Evidence*, 3 April 2009, p. 23.

29 Turner-Zeller K and Butler E, 2007, *Lifelong Learning and Work Related Education and Training for Women returning to work and retraining*, Security 4Women, p. ii.

base, and economic competitiveness, as well as contributing to a more equitable and less divisive society.³⁰

- 11.21 The Equal Employment Opportunity Network of Australasia would like to see the publication of tables of corporate remuneration.³¹ Both employees and employers would benefit from information to assist in the bargaining process.³² It would be instructive to inform women and men of the potential earnings of their career choices.

Employee entitlements

- 11.22 Unequal pay is a problem that affects women at all levels of the Australian workforce and its solution lies in overcoming stereotypes and achieving genuine cultural change, both within the workplace, and in society generally.³³ Women take it for granted that they have to make sacrifices in balancing work and family commitments.³⁴

- 11.23 Research in Victoria found that:

Notwithstanding the long history of entrenched differences in pay outcomes for women and men, gender-based pay equity is not an issue of concern for most employees. This finding highlights the need to focus on improving information and developing capability to understand and respond to equity issues. Participants in pay equity focus groups assume that there is no difference in the pay outcomes between women and men doing the same work and see pay equity as a 'non issue'. Anecdotal examples of 'unfair' treatment are not typically regarded as evidence of systemic, gender-based discrimination. For the most part, focus group participants accepted gender-based occupational segregation and preparedness to work long and unsociable working hours as legitimate explanations of the pay differential. Given this experience, it is unlikely that unions or employers will come under pressure from their members and employees to address pay

30 National Council of Jewish Women of Australia Ltd, *Submission No. 81*, p. 5.

31 Equal Employment Opportunity Network of Australasia, *Submission No. 85*, p. 3.

32 Equal Employment Opportunity Network of Australasia, *Submission No. 85*, p. 4.

33 Equal Opportunity for Women in the Workplace Agency, *Submission No. 113*, p. 11.

34 Dr Patricia Todd, Senior Lecturer, Industrial Relations and Human Resources and Co-Director, Consortium for Diversity at Work, Business School, University of Western Australia, *Transcript of Evidence*, 5 November 2008, p. 58.

equity. Acting to remedy inequity will require both unions and business to take a leadership role.³⁵

- 11.24 The provision of education and information is the preferred approach rather than relying on women to make complaints. Business and Professional Women Australia commented that more information is needed on women's employment conditions and remuneration.

The Working Women's Centres regularly receive calls from women who are, for instance, outraged that they will not receive paid maternity leave – up until the time of their pregnancy they believed they would be entitled to paid time off. General disbelief is expressed whenever there are conversations amongst employers and employees about the gender wage gap. There is a general assumption that in Australia women have won equal pay and that is usually where the analysis ends. Little or no account is taken of the impact of time out of the paid workforce to bear and raise children or to attend to other caring responsibilities, most likely carried out by women, nor of the impact of this on superannuation entitlements or capacity for lifetime earnings.³⁶

Non-traditional occupations

- 11.25 Notwithstanding a number of initiatives over the last two decades, women have not moved into non-traditional occupations to the extent that may have been hoped. The Diversity Council Australia Ltd commented that not everyone wants to work in a non-traditional areas for various reasons and this has not occurred after 30 years of campaigns.³⁷

- 11.26 Whitehorse City Council stated:

... Council would be keen to see an Australia-wide investment at the secondary schooling level in encouraging women into non-traditional roles and careers. Local Government is a large employer of women, but they continue to be segregated into a small range of occupations, and there are relatively fewer women in senior management roles in the sector compared to the total numbers of women workers in the sector. For example over sixty percent of the City of Whitehorse workforce are women, including

35 Victorian Women's Trust, *Submission No. 123*, p. 6 citing the pay equity audits conducted by Industrial Relations Victoria and an outcome of work and family focus groups conducted for IRV and IRV pay equity program.

36 Working Women's Centres, *Submission No. 119*, p. 3.

37 Ms Nareen Young, Executive Director, Diversity Council Australia Ltd, *Transcript of Evidence*, 26 September 2008, p. 39.

the Chief Executive Officer, but in the senior management ranks only 32% of these managers are women. This may be partly due to the dearth of women putting themselves forward for these roles, or because of the perceived sacrifices all managers need to make to succeed. These sacrifices may be deemed unacceptable for women who seek work/life balance.³⁸

- 11.27 The point was made, however, that it is not a simple matter of earnings. In careers such as the trades, workplace culture may also need to be addressed to encourage women to pursue these options.³⁹ Strategies to increase female participation in industries that are predominantly male will need to address workplace culture because 'there are a number of workplaces that are still quite toxic in terms of their approaches to women in particular'.⁴⁰
- 11.28 The Commissioner for Equal Opportunity Western Australia added that something would need to be done about the work environment and that 'some of the worst elements of the culture in some of those areas have not changed' and it is not surprising that women do not want to continue in that workplace.⁴¹ The Master Builders Association considered that organisational culture was a major obstacle to increasing female employment in the industry.⁴² A regional council noted:
- There is still a degree of traditional scepticism about the ability of women to do specific jobs and while this is diminishing it still exists and it is difficult to change entrenched perceptions. Positive promotion of achievements by individuals and groups will continue to remove more barriers to equity.⁴³
- 11.29 Northparkes Mines suggested that pay parity could be improved with a 'targeted communication strategy across media to attract females into non-traditional roles' and

38 City of Whitehorse, *Submission No. 89*, p. 4.

39 Ms Robyn Dale, Director, Union Research Centre on Organisation and Technology, *Transcript of Evidence*, 3 April 2009, p. 24.

40 Ms Jenness Gardner, Manager, Pay Equity Unit, Department of Commerce, Western Australian Government, *Transcript of Evidence*, 26 February 2009, p. 16.

41 Ms Yvonne Henderson, Commissioner for Equal Opportunity, Western Australia, *Transcript of Evidence*, 5 November 2008, pp. 76-77.

42 Master Builders Association, *Submission No. 93*, p. 6.

43 Shire of York, *Submission No.7*, p. 2

register of preferred employers or businesses that specifically not only target female employees into their workforce, but actively work to achieve fair access to training and promotion.⁴⁴

- 11.30 Group Training Australia suggest that the reasons more men than women are entering the trades and the occupational segregation may include 'females not wishing to undertake the type of work in some trades and their knowledge of the trade due to the gender stereotyping'.⁴⁵ GTA suggested that more information is needed on the 'impact of lower wages for apprentices in female dominated industries on their commencement in a trade' and the barriers to the participation of women in male dominated apprenticeships.⁴⁶
- 11.31 The Western Australian Local Government Association saw some value in highlighting employment opportunities in areas not traditionally undertaken by women but not on broader information programs.⁴⁷
- 11.32 Another matter raised by GTA was the lack of promotion of all trades during career counselling or employment and training organisations and the need to that employment bodies and career advisors have the required knowledge of pay equity as well as an understanding of the trades.⁴⁸ It is easier for young women to find unskilled work straight from school.

Union processes

- 11.33 Traditionally, collective bargaining and collective agreements have not been used as often as they could to promote equal pay for work of equal value, both in Australia and in other jurisdictions. The ACTU and Joint State Union Peak Councils called for information collected by the Pay Equity Unit to be available in sufficient detail to assist unions and employees participating in the bargaining processes.⁴⁹
- 11.34 Equal Employment Opportunity Network of Australasia stated:

The value of jobs in male dominated industries compared to those in female dominated industries is an issue. For blue collar work, this stems largely from the industrial muscle and historic concentration of unions. Many male dominated industries (metals,

44 Northparkes Mines, *Submission No. 10*, p. 2.

45 Group Training Australia, *Submission No. 45*, p. 9.

46 Group Training Australia, *Submission No. 45*, p. 18.

47 Western Australian Local Government Association, *Submission No. 40*, p. 5.

48 Group Training Australia, *Submission No. 45*, p. 19.

49 Australian Council of Trade Unions (ACTU) and Joint State Union Peak Councils, *Submission No. 125*, p. 29.

mining, construction, shipping, transport) have traditionally had strong unions who have been able to use industrial power to achieve higher rates of pay, possibly higher than the true value of the jobs.⁵⁰

11.35 The Tasmanian Chamber of Commerce and Industry found that:

The process of union collective bargaining is often alienating to women who see it as unduly confrontational and not something with which they wish to be associated. Agreement making where employers and employees engage directly in discussions allows a negotiation that more likely to involve all, and less likely to be confrontational.

In addition, women are more likely to more highly value flexible working conditions and family friendly work places and will accept lower wages outcomes for these arrangements.⁵¹

11.36 The Epping Club added that the advice given to employees by unions often had 'no place in the current employment market'.⁵²

11.37 The new Equal Pay Alliance was formed in order to promote equal pay and equal employment opportunities for all Australians. The ACTU is a member of the Alliance.

11.38 As discussed in Chapter 7, there is potentially a significant role for unions through their participation in advisory committees to the development of policies through activities of the Pay Equity Unit. This will streamline the preparation of relevant information for unions and also act as an educative process on an industry basis.

Employers

11.39 Research by Dr Christine Short showed that:

... the majority of employers and even of employer representatives were unaware that Western Australian women were still paid a great deal less (25% less) than Western Australian men. They also put this difference down to part time work when it is very clear that this is not the only cause.⁵³

50 Equal Employment Opportunity Network of Australasia, *Submission No. 85*, p. 3.

51 Tasmanian Chamber of Commerce and Industry, *Submission No. 87*, p. 3.

52 Epping Club, *Submission No. 12*, p. 1.

53 Dr Christine Short, *Submission No. 128*, p. 1.

11.40 There is a cultural approach to the way people perceive 'which gender should do which role and then the encouragement and the processes that are put in place by management:

... through a process of engaging and educating and mandating some of the types of outcomes that we need, we will break down that culture, but if we leave it to the market, as it were, we are running on the same ground, we are not getting anywhere. So we need to intervene and we need some action around it.⁵⁴

11.41 Ms Philippa Hall, Director, New Zealand Pay and Employment Equity Unit, cautioned that:

the 'issue is always positioned as 'out there' and back then'. The fact that it is here in our place, it is a current issue, it is way worse than we would have imagined and we turn out to be considerably worse than other organisations in our sector – those were all big shocks.⁵⁵

11.42 The Diversity Council Australia added that the:

... business community have a low awareness and understanding of what 'pay equity' means, the size of the pay equity gap, what causes pay equity, and how pay equity can be addressed. Arguably, this is the key factor adversely impacting on pay equity in Australia.⁵⁶

11.43 Research by Business and Professional Women has shown that while 94 per cent of employers are aware of the gender pay gap and agree that something needs to be done, 61 per cent did not know how to go about it.⁵⁷

11.44 Some employers have been proactive in reaping the benefits of a pay equity approach. Many private firms have undertaken diversity initiatives. ETSA Utilities, for example, have established a Diversity Working Group to remove barriers to diversity.⁵⁸

54 Mr Rodney Masson, National Director, Finance Sector Union of Australia, *Transcript of Evidence*, 3 April 2009, p. 30.

55 Ms Philippa Hall, Director, Pay and Employment Equity Unit, Department of Labour, New Zealand, *Transcript of Evidence*, 13 August 2009, p. 11.

56 Diversity Council Australia, *Submission No. 110*, p. 10.

57 Mrs Sandra Cook, Director of Policy, Business and Professional Women Australia, *Transcript of Evidence*, 5 November 2008, p. 3.

58 For example, ETSA Utilities, *Submission No. 67*, p. 1-3.

11.45 Rio Tinto has a 17 per cent female participation rate in the workforce and have a 10 per cent differential between male and female employees compared to an industry differential of 24 per cent.⁵⁹ The advancement of pay equality and improved female participation in the workplace will occur as employers recognise the benefit to their organisation.⁶⁰

11.46 Jones Lang LaSalle have developed a kit for Chief Executive Women which brings pay equity to the forefront and uses an analytical and fact based approach to look at women's participation in the workforce and assist in recognising untapped talent.⁶¹

11.47 The AEU stated that:

From a business case perspective, pay equity is seen as providing organisations with a competitive advantage in attracting and retaining a skilled and more productive workforce ... equity enhances the capacity of business to attract a broader range of quality employees in a competitive job market, reduces staff turnover, results in less absenteeism and lateness, enhances staff performance and motivation and improves productivity, providing a competitive edge and innovation contributing to improved effectiveness.⁶²

11.48 Organisations can communicate their commitment to staff by remunerating employees equally and this will be reflected in increased job satisfaction, increased productivity and employee loyalty.⁶³ Individual businesses can be encourage to act on pay inequity by providing advice and methodologies; including clauses in industrial instruments and promoting pay equity as a key indicator of good business practice.⁶⁴ Pay equity audits can provide an indication of 'the overall "health" of their business culture and the alignment of business strategy with business practice and it has been shown that:

- The pay gap in earnings between women and men varies in direct relation to the level of managerial discretion over pay and conditions;

59 Rio Tinto, *Submission No. 62*, p. 3.

60 Rio Tinto, *Submission No. 62*, p. 6.

61 Jones Lang LaSalle (NSW) Pty Ltd, *Submission No. 69*, p. 1.

62 Australian Education Union, *Submission No. 76*, p. 21.

63 EOWA web-site. Available at:

<http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/About_Equal_Opportunity/Why_EO_Makes_Business_Sense.asp>, viewed 1 October 2009.

64 Victorian Women's Trust, *Submission No. 123*, p. 7.

- The structure and spread of working hours can build or remove barriers to entry for many women;
- The payroll data in many businesses is inadequate to support effective people management and specifically to monitor pay equity responsibilities;
- Managers need the tools, skills and incentives to actively manage pay equity as a core deliverable.⁶⁵

11.49 The Diversity Council of Australia found that:

Our experience, and this is international research as well, is that the leadership from the top issue is important. Every bit of research service says that where your chief executive officer is committed to diversity change then it is going to happen. In fact, the resistance usually occurs at those supervisory and management levels and often it is simply a matter of, 'This is more work.'⁶⁶

11.50 Further, Business and Professional Women commented that while some information is available on companies with more than 100 employees through EOWA, but small and medium sized businesses are not required to share information on best practice:

Greater education and information sharing will allow all parties to negotiate for more equitable workplaces leading to greater participation and productivity.⁶⁷

11.51 The Burwood Council commented that:

Advancement of the careers of women has also been impeded by employers notions or concerns that female employees may have future work/family choices that may cause an inconvenience on the workplace. A radical shift in thought across the nation is required and world best practices, especially those that have been in place in Europe over several decades, now need to be encouraged in Australia.⁶⁸

11.52 The ACT Council of Social Services added that:

... anticipated family responsibilities can shape women's decisions about the amount and kind of investment in training and education. Because women expect to spend less time in the

65 Victorian Women's Trust, *Submission No. 123*, p. 7.

66 Ms Nareen Young, Executive Director, Diversity Council Australia Ltd, *Transcript of Evidence*, 26 September 2008, p. 41.

67 Business and Professional Women Australia, *Submission No. 117*, p. 2.

68 Burwood Council, *Submission No. 73*, pp. 1-2.

workforce than men, it is less profitable for women to invest in market-orientated skills.⁶⁹

- 11.53 Similarly, the Independent Education Union of Australia included in a list of things impacting on women's earnings:

... employers' negative perceptions about the effect of family responsibilities on work performance, attitude and loyalty to the organisation, which in turn may affect remuneration and promotional aspects.⁷⁰

- 11.54 Men do not have the break in employment and are seen as being more stable and are moved into senior and management positions.⁷¹ However, situations in which a male travels overseas for a number of years appear to be treated differently on return from a female who has been absent because of family responsibilities. Working Women's Centre South Australia observed an elevated level of bullying in the workplace after a return to work from maternity leave or after an accident.⁷²

- 11.55 There is a perception that it is less valuable to invest in women than men or that men are more suited to management jobs.⁷³ For those wishing to take family friendly work opportunities, there is also a perceived risk to job security and career progressions.⁷⁴ In relation to combining part time work, caring responsibilities and access to existing entitlements, the CPSU referred to the need for a change in culture among managers and employers.⁷⁵

- 11.56 Within the culture of organisations and workplaces, there is a view that part time employees are less committed.

At the same time employers must be proactive in not only offering (and accommodating) part time work but advocating a workplace culture that embraces non standard working hours. This will work to dismiss any perception that if you work part time you are not committed to a career in the organisation. This stigma attached to

69 ACT Council of Social Services, *Submission No. 54*, p. 4.

70 Independent Education Union of Australia, *Submission No. 100*, p. 6.

71 Mr Steven Ross, Industrial Officer, Queensland Nurses Union, *Transcript of Evidence*, 31 March 2009, p. 57.

72 Ms Sandra Dann, Director, Working Women's Centre South Australia, *Transcript of Evidence*, 6 November 2008, p. 44.

73 Dr Christine Short, *Transcript of Evidence*, 19 March 2009, p. 3.

74 ACT Council of Social Services, *Submission No. 54*, p. 5.

75 Community and Public Sector Union, *Supplementary Submission No. 13.1*, p. 22.

part time work is seen by some researchers as being even more of an issue for men.⁷⁶

11.57 A survey conducted by Association of Professional Engineers, Scientist, Managers, Australia found that 'even where part-time work is reported as available, in some cases utilising this option may be more difficult due to workplace culture and potential impact on a person's career.'⁷⁷

11.58 Chevalier College commented that:

In general, part-time workers are highly dedicated and committed members of an organisation's staff. Women juggling career responsibilities with family demands need flexible work arrangements, such as flexi-time, job sharing and the opportunity to work from home. Choosing to work part-time should not be seen as a career disadvantage.⁷⁸

11.59 Diversity Council Australia stated:

These intermittent employment patterns are likely to have a negative impact on employment market participation/career progression because of persistent historic negative community attitudes to 'women's working patterns'. Finally, women with care-giving responsibilities may be subject to other workplace participants' negative perceptions about the effect of family responsibilities on work performance, attitude and loyalty to an organisation and the employment market more generally. In turn, this may affect remuneration, access to higher remuneration both within organisations and in the wider employment market, and promotional prospects.⁷⁹

11.60 Much of this could also be attributed to 'intellectual laziness by managers. It is extremely difficult managing a part time workforce'.⁸⁰ The City of Whitehorse added that:

76 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 46 citing Nader C, 2008, 'Lives in the Balance', *The Age*, July 26, p. 4 quoting Melbourne Institute Deputy Director Professor Mark Wooden.

77 Association of Professional Engineers, Scientist, Managers, Australia, *Submission No. 121*, p. 33.

78 Chevalier College, *Submission No. 82*, p. 1.

79 Diversity Council Australia, *Submission No. 110*, pp. 8-9 citing New South Wales Office of Industrial Relations (2004). *Why is there a gap between men's and women's earnings?* Available at: <<http://www.workandfamily.nsw.gov.au/payequity/gap.html>>.

80 Ms Jenness Gardner, Manager, Pay Equity Unit, Department of Commerce, Western Australian Government, *Transcript of Evidence*, 26 February 2009, p. 9.

In some cases the reluctance to experiment with flexible options at a senior level in local government is based on commitments to community and elected representatives, where it is assumed that a flexible arrangement will not work. Alternatively the assumption may be based on previous experience, where poor incumbent fit in the role, or where the flexible arrangement was an inappropriate match with the role rather than the flexibility itself. There is an opportunity for Council to 'challenge' some of the traditional thinking about how roles are 'structured' at a senior level to enable both the individual needs of women and the business to be met.⁸¹

11.61 The fastest way to change attitude and culture is to have high-performing men with child care or eldercare responsibilities undertake flexible working arrangements.⁸² The reasons men do not utilise family-friendly workplace arrangements include a lack of awareness about what is available, concerns about money, concerns about adverse effects on careers, fears about job security, negative attitudes of supervisors and an overall perceived lack of support'.⁸³

11.62 Women's Health Victoria stated:

Increasingly, men are taking on those roles that are not traditional for men. They talk about the way in which they are treated in the workplace as being less dedicated or less interested in the business or company and how therefore they are overlooked for promotion in the way that women are when they choose to have that balance in their lives. Also, men still talk about the way in which they are treated when they take the child to child care or occasional care, which is as the odd one out.⁸⁴

11.63 The Australian Human Rights Commission commented that business now understand the language for child care need but have some way to go in relation to the episodic nature of elder care.⁸⁵

11.64 EOWA suggested the development of a community education programme on the gender pay gap include an element specifically targeted toward

81 City of Whitehorse, *Submission No. 89*, p. 2.

82 Commissioner Elizabeth Broderick, Sex Discrimination Commissioner, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, p. 10.

83 Human Rights and Equal Opportunity Commission, 2007 *It's About Time Women, men, work and family Final Paper 2007*, p. 87.

84 Ms Marilyn Beaumont, Executive Director, Women's Health Victoria, *Transcript of Evidence*, 2 April 2009, p. 42.

85 Commissioner Elizabeth Broderick, Sex Discrimination Commissioner, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, p. 10.

employers and informing them on the realities and issues of this fundamental workplace inequity.⁸⁶

- 11.65 The preparation of Employer and Employee Guidelines in relation to workers with family and carer responsibilities, setting out rights and responsibilities, including a specific focus on small business and a major public awareness campaign would be of assistance.⁸⁷ The Centre for Work + Life also made five recommendations in relation to information for employers and employees:
- all employers be required to provide with a simple information sheet on the wages and conditions applicable to their situation;
 - minimum wage, annual adjustments and penalties for non-payment be set out clearly and accessible to employers and employees;
 - information and advice be provided to employees and employers about negotiating rights and processes and further avenues of support and representation;
 - the government support independent specialist advice and advocacy services for vulnerable workers; and
 - the government establish a Small Business Advocate to assist small business avoid and resolve cases of unfair dismissal, including by developing codes of practice.⁸⁸

Women in Leadership

It is not women against men ... and not that the world will be a better place if women run it, but that the world will be a better place when women who bring their perspectives share in running it.⁸⁹

- 11.66 The World Economic Forum's Global Gender Gap Report 2008, a World Economic Forum's Executive Opinion Survey 2008 question was put: 'In your country, do businesses provide women the same opportunities as men to rise to positions of leadership? (1 = no, women are unable to rise

86 Equal Opportunity for Women in the Workplace Agency, *Submission No. 113*, p. 22.

87 Human Rights and Equal Opportunity Commission, 2007 *It's About Time Women, men, work and family Final Paper 2007*, p. xx.

88 Centre for Work + Life, 2007, *Women and WorkChoices, Impacts on the Low Pay Sector*, August 2007, p. 15.

89 Ms Linda Bennett, Women's Policy Officer, Victorian Local Government Association, *Transcript of Evidence*, 24 October 2008, p. 4, citing a statement by Indira Patel of the British Women's National Commission from a 2002 visit to Victoria.

to positions of leadership, 7 = yes, women are often in management positions).⁹⁰ In Australia the ability for women to rise to enterprise leadership was rated at 4.75.⁹¹

11.67 The Minister for the Status of Women stated at a recent Australian Women's Leadership Symposium that

The Government is committed to boosting and supporting women's leadership in the public sector, business and the broader community and is implementing a range of measures to realise this goal.⁹²

Current situation

11.68 The most recent EOWA Census of Women in Leadership Report was released on 28 October 2008. This report revealed that,

the number of women on boards and in executive management positions has declined since 2006, and in some cases reverted to pre-2004 levels. Australia now trails the USA, UK, South Africa and New Zealand.⁹³

Table 11.2 EOWA Australian Census of Women in Leadership 2008

Gender Data	Number of Women	Total Number	% of Women
Chairs	4	200	2.0%
CEOs	4	201	2.0%
Board directors	125	1504	8.3%
Line executive management positions	72	1215	5.9%
Support (staff) executive management positions	110	485	22.7%
Executive managers	182	1700	10.7%

Source EOWA Australian Census of Women in Leadership 2008, Key Findings – Census Factsheet.

90 World Economic Forum, 2008, *The Global Gender Gap Report 2008*, p.37.

91 World Economic Forum, 2008, *The Global Gender Gap Report 2008*, p. 43.

92 Plibersek, T (Minister for the Status of Women), speech, 2009 Australian Women's Leadership Symposium, Canberra, 17 June 2009.

93 Equal Opportunity for Women in the Workplace Agency, 2008 *EOWA Australian Census of Women in Leadership, Women's glacial progress melts away*, media release, Sydney, 28 October 2008.

- 11.69 More recently, on 17 June 2009, EOWA released *Pay, Power and Position: Beyond the 2008 EOWA Australian Census of Women in Leadership* which provided further analysis of EOWA's Census of Women in Leadership. According to EOWA, despite women's low overall representation at board director level (approximately 12 male board directors to every female board director) once appointed women appear to be at least as influential as their male counterparts.⁹⁴

Necessary changes

- 11.70 Change in attitude needs to occur across organisations and industries, public and private sector. Women into Politics highlighted this issue,

Some trades unions, administered by mainly male officers, traded off women's claims for equal pay or maternity leave for wage increases when it came to the crunch in award negotiations.⁹⁵

- 11.71 In explaining the situation for women councillors, the Victorian Local Government Association stated that:

the formal democratic participation of women is unlikely to reach anywhere near 50 per cent unless the dual issues of remuneration and working conditions in local government for elected councillors are addressed.⁹⁶

- 11.72 Some local government's explained the sorts of methods to increase the number of women in leadership roles. For example the City of Melbourne indicated,

...we have a women in leadership strategy in place, and that is primarily focused around looking at how we develop and build the talent of women in the organisation to take on senior leadership roles. At the moment 55 per cent of our workforce are women, but only 25 per cent are represented in senior leadership roles. That has recently been improved with the appointment of a female CEO. The issue for us is really around the associated issues, looking at how women return to the workforce part time, perhaps from maternity leave, and ensuring our operational requirements

94 Equal Opportunity for Women in the Workplace Agency, *Women directors may punch above their weight but women execs are on the ropes: EOWA Report*, media release, Sydney, 17 June 2009.

95 Women Into Politics Inc, *Submission No. 49*, pp. 4-5.

96 Ms Linda Bennett, Women's Policy Officer, Victorian Local Government Association, *Transcript of Evidence*, 24 October 2008, p. 5.

enable them to do that, and also looking at training, development and promotional opportunities.⁹⁷

11.73 Similarly, the City of Greater Geelong referred to:

...running a number of leadership programs throughout the organisation to encourage more women to consider jobs at the managerial and team leader level. There is some specific training that we undertake for women that will assist them if they want to take the next step into that coordinator level and managerial position level. But we are very pleased that, at the executive level, we have got a very high proportion of women serving as our general managers and our CEO.⁹⁸

11.74 Rio Tinto is also 'seeking to increase the number of women in senior management positions ... from the current level of 7% to a target rate of 20% by 2009'.⁹⁹ In an effort to address the women in leadership issues, some Rio Tinto business units have more specifically:

- applied for exemptions to prioritise the progression of female applicants for particular roles (ie operators);
- ensured female candidates were included in all external recruitment for vacant and new roles;
- ensured that internal leadership appointments include at least one female candidate on the short list; and
- continued to ensure women have access to internal leadership and development training programs.¹⁰⁰

11.75 At a Rural Women's Summit, the Minister for Agriculture, Fisheries and Forestry recognised this issue in his comment on the composition of advisory boards,

When boards keep appearing before me with about 20-25% female representation, I find it really hard to believe that the selection has been done purely on merit. I am not interested in imposing formal quotas on selection committees, but at the same time, I've got to say...that selection on merit simply cannot be occurring when

97 Ms Samantha Stanton, Team Leader, Human Resources Counselling, City of Melbourne, *Transcript of Evidence*, 24 October 2008, p. 6.

98 Mr Howard Oorloff, Manager, Organisation Development Department, City of Greater Geelong, *Transcript of Evidence*, 24 October 2008, p. 3.

99 Rio Tinto, *Submission No. 62*, p. 5.

100 Rio Tinto, *Submission No. 62*, p. 6.

women are so consistently and so blatantly underrepresented on almost every single board that is meant to be advising me.¹⁰¹

11.76 The World Economic Forum stated in its Global Gender Gap Report 2008:

Innovation requires new, unique ideas – and the best ideas flourish in a diverse environment. This implies that companies benefit by successfully integrating the female half of the available talent pool across their internal leadership structures. Studies exploring this link have shown a positive correlation between gender diversity on top leadership teams and a company's financial results.¹⁰²

11.77 The suggestions made to Commissioner Broderick included more women were needed in senior positions and that:

Increasing the representation of women at the highest levels would help challenge and change the gendered culture of workplaces and institutions.¹⁰³

Changing the culture

11.78 EOWA identified cultural change as an important factor in addressing the gender pay gap:

It is one thing to have policies in place about these things and to undertake audits and so on, but it needs an action plan at an individual business level to follow through. We think a lot of it is about cultural change in the businesses that we deal with and getting an understanding of and causes of pay equity and the solutions or possible solutions.¹⁰⁴

11.79 Historically there has been a focus on discrimination against women which needs to change to one of gender equality and this will require a significant shift in workplace culture:

101 Hon. Tony Burke, (Minister for Agriculture, Fisheries and Forestry), transcript of speech, Rural Women's Summit, Canberra, 27 June 2008. Transcript at <http://www.maff.gov.au/transcripts/transcripts/2008/june_2008/rural_womens_summit>, viewed 30 September 2009.

102 World Economic Forum, *Global Gender Gap Report 2008*, 2008, p.22, citing Catalyst, *The Bottom Line: Connecting Corporate Performance and Gender Diversity*, 2004.

103 Human Rights and Equal Opportunity Commission (2008) *Gender equality: What matters to Australian women and men, the Listening Tour Community Report*, p. 7.

104 Ms Mairi Steele, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 20 August 2009, p. 7.

This requires redefining central concepts such as remuneration, gender-neutral language to describe tasks and skills and developing gender-neutral analyses of job evaluation and inclusive approaches to skills acquisition and transferability. There also need to be changes to the nature of management positions such that increasing the flexibility of senior roles will make these positions more attractive for women.¹⁰⁵

11.80 Various types of discrimination can be evident in the workplace such as:

- the historical and hierarchical system in place in many workplaces which tends to group numbers of women in particular categories rather than assessing the person or valuing the position individually or specifically;¹⁰⁶
- Other women in the workplace view promotions and flexible working arrangements as favouritism and paid maternity leave are seen with envy; and ¹⁰⁷
- most Australians surveyed believe that gender pay gap should be closed.¹⁰⁸

Benefits of an educational approach

11.81 The Queensland Industrial Relations Commissioner highlighted education as 'essential and fundamental to the progressing of pay equity'.¹⁰⁹ The industrial relations system alone will not deliver pay equity and only piecemeal gains are likely to be made if the broader social agenda is not addressed.¹¹⁰

11.82 Work and Family Policy Roundtable commented that pay equity has not been an issue of public debate and the impact of education and information occurs at several levels including:

Awareness of the extent of gender pay inequity among the general population, awareness of entitlements and employment standards among employees, transparency of pay levels within

105 University of Western Sydney, *Submission No. 86*, p. 3.

106 Shire of York, *Submission No.7*, p. 1.

107 Shire of York, *Submission No.7*, pp. 1-2.

108 Diversity Council Australia, *Submission No. 110*, p. 12.

109 Commissioner Glenys Fisher, Queensland Industrial Relations Commission, *Transcript of Evidence*, 31 March 2009, p. 4.

110 Commissioner Glenys Fisher, Queensland Industrial Relations Commission, *Transcript of Evidence*, 31 March 2009, p. 6.

organisations, and an understanding of the undervaluation of 'women's work' among the industry partners (employers, unions, employees) and members of industrial tribunals.¹¹¹

11.83 The Australian Education Union concluded that:

Given these imperatives it is unjust and unwise for society to continue to accept the limitation placed on potential participants in the skilled workforce because of gendered expectations within industries/occupations and by employers and employees alike.¹¹²

11.84 Commissioner Broderick found that 'gender inequality is a pervasive and deep rooted phenomenon that will not be successfully addressed without significant change' and suggested that:

Educating the community on the value of unpaid work and educating employers and employees on effective flexible work practices were also suggested to overcome the struggle many women and men face to balance paid and unpaid work.¹¹³

11.85 National Institute of Labour Studies stated:

I think that male pathways through the labour market are conditioned by their preparedness to work long hours early in life and the fact that they do not have striking absences or periods of withdrawal from the labour force during the time in which they are raising children and taking care of things in the home.¹¹⁴

11.86 Education and awareness raising play a crucial role in supporting cultural change and it is important to 'incorporate men's role as carers into existing policy frameworks and initiatives'.¹¹⁵ The National Council of Women of Australia considered the lack of institutional support to 'alleviate the burdens of the work-family collision' to be a significant impediment to equality.¹¹⁶

11.87 The focus of the Pay Equity Unit in Western Australia has been to 'make our information useful, interesting, memorable, catchy and user friendly,

111 Work and Family Policy Roundtable, *Submission No. 143*, p. 11.

112 Australian Education Union, *Submission No. 76*, p. 22.

113 Human Rights and Equal Opportunity Commission (2008) *Gender equality: What matters to Australian women and men, the Listening Tour Community Report*, p. 4.

114 Mr Joshua Healy, Research Assistant, National Institute of Labour Studies, Flinders University, *Transcript of Evidence*, 6 November 2008, p. 20.

115 Human Rights and Equal Opportunity Commission, 2007 *It's About Time Women, men, work and family Final Paper 2007*, p. xiv.

116 National Council of Women of Australia, *Submission No. 37*, p. 6.

and it is aimed at our average employer, who is extremely busy'.¹¹⁷ The Working Women's Centre South Australia cautioned that a national campaign that 'only seeks to scare the horses' would not be useful.¹¹⁸ The Victorian Government has found that:

... increasing awareness of pay equity does not always need to be undertaken through a formal information campaign. Workforce Victoria (WV) has demonstrated that working in partnership with employers, employees and their representatives to conduct a payroll audit provides a successful means to educate and inform industry, employers, and employees.¹¹⁹

11.88 Close the Gap in Scotland found that advertising may not have been the best approach:

We ran quite a large above the line advertising campaign looking at the issue of equal pay which targeted employers as well as employees and was really quite costly. It was the most costly piece of work that we did. I think that it is very difficult to communicate around issues of gender pay equality. I think the issue is complicated, there are a number of causes of it and there are social issues as well as issues that are within the ambit of employers to tackle. I think that it needs more care than we took to communicate some of those messages effectively. That was certainly a learning point for us that you need to take a more direct, a more strategic approach in some ways than the one we took with trying to solve the problem through advertising.¹²⁰

11.89 Dr Christine Short supported:

Education and information provision on equal pay issues is imperative when wanting to effect change in our society ... key stakeholders in industrial relations, both in WA and federally, felt that the continuing pay gap between men and women working full-time was due mostly to slowly changing social values. Change in social values can only be effected when awareness of the issue is also high.¹²¹

117 Ms Jenness Gardner, Manager, Pay Equity Unit, Department of Commerce, Western Australian Government, *Transcript of Evidence*, 26 February 2009, p. 4.

118 Ms Sandra Dann, Director, Working Women's Centre South Australia, *Transcript of Evidence*, 6 November 2008, p. 37.

119 Victorian Government, *Submission No. 136*, p. 8.

120 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 10.

121 Dr Christine Short, *Submission No. 128*, p. 1.

- 11.90 While community education does need to be ongoing, a great deal can be achieved by the approaches suggested in previous chapters. An expensive media campaign may not be the most cost effective approach. The approaches by state governments and international experiences are also informative in this respect. There is a substantial need for cultural changes within the Australian community with regard to pay equity that are required to reinforce the need for the implementation of the comprehensive strategy present in this report.

Conclusions

- 12.1 Over the last two decades there has been a significant increase in female participation in the labour force which has been beneficial to Australia's national productivity levels. It has, however, not been all good news. Women in Australia still do not enjoy the same opportunities or levels of remuneration and conditions as men for work of similar value. Australia's gender pay gap has for some time been similar to those of comparable OECD countries. Recently, however, Australia has seen an increase in the gender pay gap which must be addressed as a matter of urgency if Australia is to realise its full economic potential.
- 12.2 Australia's international obligations require that women and men receive equal remuneration for work of equal value. Attempts to address the gender pay gap in Australia over the last couple of decades have met with limited success. Professional and managerial women in Australia still experience the highest gender pay inequities and women are also likely to work in the low paid sectors.
- 12.3 Research has identified a range of factors that impact on the gender wage gap globally including personal, job, institutional and company characteristics; gender segregation and social norms and traditions. Recent research in Australia has shown that many of the traditional factors are less relevant to the Australian situation and that occupational and industry characteristics and wage setting mechanisms may be responsible for up to 89 per cent of the difference. Recent trends have been identified within industries and under various wage setting mechanisms which will enable better analysis of the causal factors.

Wage setting arrangements

- 12.4 Much of the blame for the current level of the gender pay gap has been attributed to the Australian Workplace Agreements of the past. On

average the gender pay gap for employees covered by AWAs was higher than for other wage setting mechanisms. Evidence to the inquiry has also made the point that most AWAs merely allowed for over award payments or provided for specific hours of work. In these respects there is significant similarity between the AWA and the individual flexible agreements being introduced. It is therefore important that new agreements be monitored to ensure there is not a similar outcome. Further, women have not fared as well as men under enterprise or collective agreements. The community must not become complacent that the removal of AWAs will alleviate gender pay equity issues.

- 12.5 There are four main industry groups in the low paid sector but these are dissimilar in skills requirements and wage setting mechanisms. Women are more likely to be reliant on the minimum wage or awards than men. The community services and property sector has some sections that require higher skills levels which may not be remunerated adequately and job evaluations may be of assistance. Much of the community services sector rely on government funding and a systemic review of the entire process is warranted.

Role of Government

- 12.6 The government needs to lead by example. An annual statement in Parliament by the Minister for the Status of Women should announce the Government's achievements each year in addressing pay equity and demonstrate an appropriate priority. The relocation of the Office for Women to the Department of Prime Minister and Cabinet will provide a central focus for these issues in policy development.
- 12.7 The gender pay gap in the Australian Public Service is higher than the New Zealand average. The public service should be required to demonstrate leadership and be accountable through the implementation of pay equity strategies and the annual reporting on pay equity in each agency. Gender equality schemes should be publicly stated for government policy initiatives. To do business with the government it should also be a basic requirement that companies meet Australia's pay equity principles.

Pay equity framework

- 12.8 The complexity and pervasiveness of the gender pay gap in Australia requires that a number of different strategies be implemented. A number of changes are needed to the *Fair Work Act 2009* to ensure that women have the opportunity to present their case where there is evidence of

undervaluation of the skills necessary for that occupation. Employees in the states and territories should not be disadvantaged relative to their colleagues by being covered by the federal jurisdiction. A number of safeguards are also needed to ensure that pay equity considerations are integral to all future award considerations.

- 12.9 Other aspects of government policy that impact equity include superannuation measures, taxation policies, child care services, parental leave and many other aspects. Pay equity consideration should accompany all Cabinet and government decisions.

Pay Equity Unit

- 12.10 The establishment of a Pay Equity Unit within Fair Work Australia would offer the opportunity to rectify past wrongs and introduce measures to ensure that female participation in the work force is optimised. The Unit will provide a focal point for the implementation of the range of improvements that are necessary to prevent a further deterioration in the gender pay gap and to develop a federal framework to work with and compliment the initiatives already taken in the states and territories.

Private sector

- 12.11 Relevant data is required in order to identify the key areas to be addressed, to develop appropriate mechanisms to reduce the gender pay gap and to demonstrate the relevance to the wider community. Appropriately larger firms are currently required to submit reports to the Equal Opportunity for Women in the Workplace Agency. Much of the information needed to make the analyses is already collected by government agencies and it is therefore unfair to ask small and medium size businesses to provide this information again. Government agencies such as the Australian Taxation Office collecting the relevant information should be required to provide it in an aggregate form for analysis by the Pay Equity Unit.
- 12.12 Businesses in Australia have generally not treated gender pay equity as a high priority. Most companies in Australia believe that there is no gender gap in their organisation but would be happy to address the issues if they were aware of the situation. The industry by industry approach will allow the development of relevant policies for each sector.

Families

- 12.13 Families needing to balance work and caring responsibilities must have available to them real choices not constrained by a system that

disadvantages the women. The National Employment Standards will provide benefits to those who are eligible but as this refers provides a right of request, the scope of application should be broadened to all employees.

- 12.14 Women who receive adequate support have a greater range of options to select from in managing caring responsibilities and participation in employment. A paid parental scheme is to be introduced but much more needs to be done to ensure that families have a real choice in the balance between work and caring responsibilities. Of particular importance is the need for quality part time work to be available. Women in Australia have the highest level of educational achievements globally but many work part time and in positions that do not fully utilise their skills.

Culture in the community

- 12.15 The achievement of a reduction in the gender wage gap to its minimum possible levels will require an enormous shift in the Australian culture. Gender equity is currently not well understood and the benefits are not appreciated. A start can be made towards a better future by introducing appropriate information in to the school curriculum and higher education institutions. Young women must be aware of the potential opportunities and relevant career information to be able to make an informed decision.
- 12.16 Evidence in submissions to the inquiry and in the media indicate that there has already been a shift in union and employer approaches. Ongoing encouragement and the provision of relevant information is essential to build on and maintain this momentum. While more employers are offering family friendly entitlements, workplace culture has not always treated fairly those utilising these options or have discouraged other from making this choice.

Economic benefits

- 12.17 The opportunity to increase labour force productivity through a perception of greater equity cannot be ignored in the current global economic situation. The factors contributing to the gender pay gap are complex and multifaceted. As Australia is currently undergoing significant industrial relations and taxation reforms, and this provides an ideal opportunity to rectify the situation. To address these issues a holistic approach is crucial and government must lead by example.

- 12.18 Pay equity is important for Australia's future prosperity and economic productivity and is a basic human right. To not address pay inequity is inefficient and unfair.

Ms Sharryn Jackson MP
Chair



Appendix A – List of submissions

- 1 Name Withheld
- 2 A Noble & Son Limited
- 3 Tutt Bryant Group Limited
- 4 Government Skills Australia
- 5 Honda Australia Motorcycles & Power Equipment Pty Ltd
- 6 Archdiocesan Services
- 7 Shire of York
- 8 Koorda Shire Council
- 9 Lourdes Hill College Limited
- 10 Northparkes Mines
- 11 City of Melbourne
- 12 The Epping Club
- 13 Community and Public Sector Union (CPSU)
- 13.1 Community and Public Sector Union
- 13.2 Community and Public Sector Union
- 13.3 Community and Public Sector Union (CPSU) SUPPLEMENTARY
(to Submission No. 13)
- 14 Shire of Donnybrook-Balingup
- 15 PARLIAMENTARY-IN-CONFIDENCE
- 16 Griffith Hack Unit Trust

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- 17 Security for Women
 - 18 Australian Airports Association Ltd
 - 19 Central Queensland University
 - 20 Quicksilver Connections Limited
 - 21 Mackay Sugar Limited
 - 22 Cabonne Council
 - 23 Brisbane City Council
 - 24 Macquarie Textiles Group Limited
 - 25 Tourism Northern Territory
 - 26 Tourism Western Australia
 - 27 Break O'Day Municipal Council
 - 28 Warringah Council
 - 29 PARLIAMENTARY-IN-CONFIDENCE
 - 30 Ventura Bus Lines/ National Bus Company
 - 31 City of Perth
 - 32 Catholic Education Office of Canberra and Goulburn
 - 33 TNT Australia Pty Limited
 - 34 Crown
 - 35 National Centre for Vocational Education & Research
 - 35.1 National Centre for Vocational Education & Research
SUPPLEMENTARY (to Submission No. 35)
 - 36 Hydro Aluminium Kurri Kurri Pty Ltd
 - 37 National Council of Women of Australia Inc Ltd
 - 38 PARLIAMENTARY-IN-CONFIDENCE
 - 39 ACTTAB Limited
 - 40 Western Australian Local Government Association
 - 41 Trinity Grammar School - Kew
 - 42 Recruitment & Consulting Services Association
 - 43 The Sovereign Hill Museums Association

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- 44 Women with Disabilities Australia
 - 45 Group Training Australia
 - 46 Sims Group Limited
 - 47 Aged & Community Services Tasmania
 - 48 Port Stephens Council
 - 49 Women Into Politics Inc
 - 50 Federation of Ethnic Communities Councils of Australia
 - 51 Australian Institute of Management
 - 52 Vodafone Australia Limited
 - 53 GHD Services Pty Ltd
 - 54 ACT Council of Social Services
 - 55 Cook Shire Council
 - 56 City of Onkaparinga
 - 57 Local Government Association of NSW and Shires Association of NSW
 - 58 Department of Education, Employment and Workplace Relations
 - 58.1 Department of Education, Employment and Workplace Relations SUPPLEMENTARY (to Submission No. 58)
 - 58.2 Department of Education, Employment and Workplace Relations SUPPLEMENTARY (to Submission No. 58)
 - 58.3 Department of Education, Employment and Workplace Relations SUPPLEMENTARY (to Submission No. 58)
 - 58.4 Department of Education, Employment and Workplace Relations SUPPLEMENTARY (to Submission No. 58)
 - 59 Annecto Incorporated
 - 60 PARLIAMENTARY-IN-CONFIDENCE
 - 61 Australian Institute of Interpreters and Translators Inc
 - 62 RIO TINTO
 - 63 Australian Institute of Superannuation Trustees
 - 64 Australian Catholic Council for Employment Relations

65	PARLIAMENTARY-IN-CONFIDENCE
66	Kiama Municipal Council
67	ETSA Utilities
68	Project Respect inc
69	Jones Lang LaSalle Australia Pty Ltd
70	Orange City Council
71	Frigrite Refrigeration Pty Ltd
72	Chamber of Commerce and Industry of Western Australia (Inc)
73	Burwood Council
74	Australian Maritime Officers Union
75	PARLIAMENTARY-IN-CONFIDENCE
76	Australian Education Union
77	Hamilton James and Bruce Group Ltd
78	Ritchies Stores Pty Ltd
79	Fuji Xerox Australia Pty Ltd
80	Women's Health Victoria
81	National Council Jewish Women of Australia
82	Chevalier College Limited
83	Northern Cooperative Meat Company Limited
84	Australian Chamber of Commerce & Industry
85	Equal Employment Opportunity Network of Australasia
86	University of Western Sydney
87	Tasmanian Chamber of Commerce and Industry Ltd
88	Howard Florey Institute
88.1	Howard Florey Institute SUPPLEMENTARY (to Submission No. 88)
89	Whitehorse City Council
90	City of South Perth
91	Restaurant and Catering Australia

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- 92 ACT Government
- 93 Master Builders Australia Inc
- 94 National Foundation of Australian Women
- 94.1 National Foundation of Australian Women SUPPLEMENTARY
(to Submission No. 94)
- 95 Morgan Stanley Australia Limited
- 96 Police Federation of Australia
- 97 Australian Nursing Federation
- 98 National Tertiary Education Industry Union
- 99 Construction Forestry Mining and Energy Union
- 100 Independent Education Union of Australia
- 101 City of Greater Geelong
- 102 Australian Public Service Commission
- 102.1 Australian Public Service Commission SUPPLEMENTARY (to
Submission No. 102)
- 103 Captain Carmen Blanco
- 104 Australian Institute of Management
- 104.1 Australian Institute of Management SUPPLEMENTARY (to
Submission No. 104)
- 105 Electrolux Home Products Pty Limited
- 106 South Australian Premier's Council for Women
- 107 Community and Public Sector Union State Public Services
Federation Group
- 108 Australian Human Rights Commission
- 109 Industrial Relations Research Centre
- 109.1 Industrial Relations Research Centre SUPPLEMENTARY (to
Submission No. 109)
- 110 Diversity Council Australia
- 111 Xstrata Zinc Australia

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- 112 Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs
 - 113 Equal Opportunity for Women in the Workplace Agency
 - 114 Dr Michael Lyons and Ms Meg Smith
 - 115 Queensland Nurses' Union
 - 116 Ms Jeane Wells
 - 117 BPW Australia
 - 118 National Pay Equity Coalition and Women's Electoral Lobby Australia Inc
 - 118.1 National Pay Equity Coalition and Women's Electoral Lobby Australia Inc SUPPLEMENTARY (to Submission No. 118)
 - 118.2 National Pay Equity Coalition and Women's Electoral Lobby Australia Inc SUPPLEMENTARY (to Submission No. 118)
 - 118.3 National Pay Equity Coalition and Women's Electoral Lobby Australia Inc SUPPLEMENTARY (to Submission No. 118)
 - 119 Working Women's Centre
 - 120 Devonport City Council
 - 121 Association of Professional Engineers, Scientists and Managers Australia (APESMA)
 - 121.1 Association of Professional Engineers, Scientists and Managers Australia (APESMA) SUPPLEMENTARY (to Submission No. 121)
 - 122 Finance Sector Union of Australia
 - 123 Victorian Women's Trust
 - 124 Government of South Australia
 - 125 Australian Council of Trade Unions (ACTU)
 - 126 Associate Professor Siobhan Austen
 - 127 Pharmacy Guild of Australia
 - 127.1 Pharmacy Guild of Australia SUPPLEMENTARY (to Submission No. 127)
 - 128 Dr Christine Short
 - 129 Tourism Alliance Victoria

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- 130 PARLIAMENTARY-IN-CONFIDENCE
- 131 Equal Opportunity Commission of Western Australia
- 131.1 Equal Opportunity Commission of Western Australia
SUPPLEMENTARY (to Submission No. 131)
- 132 Australian Bureau of Statistics
- 132.1 Australian Bureau of Statistics SUPPLEMENTARY (to Submission
No. 132)
- 133 Lincolne Scott
- 134 Department of Consumer and Employment Protection -
Government of Western Australia
- 135 Queensland Government
- 136 Victorian Government
- 137 Centre for Work + Life
- 138 Liquor, Hospitality and Miscellaneous Union - QLD Branch
- 138.1 Liquor, Hospitality and Miscellaneous Union SUPPLEMENTARY
(to Submission No. 138)
- 138.2 Liquor, Hospitality and Miscellaneous Union - WA Branch
SUPPLEMENTARY (to Submission No. 138)
- 139 The Australasian Institute of Mining & Metallurgy
- 140 United Services Union
- 141 The Victorian Bar
- 142 Kingsford Legal Centre
- 143 Work and Family Policy Roundtable
- 144 Law Council of Australia
- 145 Mr Rodney Stinson
- 146 Mr John McLennan
- 147 The Australian Council of Social Service
- 148 New Zealand Department of Labour
- 149 Ms Emma Ritch
- 150 PARLIAMENTARY-IN-CONFIDENCE

- 151 Hon Wayne Swann MP
- 151.1 Hon Wayne Swann MP SUPPLEMENTARY (to Submission No. 151)
- 152 PARLIAMENTARY-IN-CONFIDENCE
- 153 NSW Office for Women's Policy
- 154 National Ethnic Disability Alliance
- 155 PARLIAMENTARY-IN-CONFIDENCE



Appendix B – List of exhibits

- 1 PARLIAMENTARY-IN-CONFIDENCE

- 2 Roy Morgan Research Pty Ltd
Women, the Media, and People from Other Countries who have made Victoria – 1851 to today,

- 3 Ms Julie Winzar
Transformation in the Way Australian Workers Participate in Employment

- 4 PARLIAMENTARY-IN-CONFIDENCE

- 5 Port Stephens Council
Port Stephens Council Enterprise Agreement 2008
(Related to Submission No. 48)

- 6 Diversity Council Australia
Australian's Attitudes to Pay Equity
(Related to Submission No. 110)

-
- 7 Industrial Relations Research Centre
NZ DOL Pay and Employment Equity Unit Spotlight
(Related to Submission No. 109)
- 8 Community and Public Sector Union
Far From Equal. The Glass Ceiling in the Australian Public Service
(Related to Submission No. 13)
- 9 Port Stephens Council
Port Stephens Workplace Equity & Diversity Plan 2008-2012
(Related to Submission No. 48)
- 10 Australian Institute of Superannuation Trustees
Submission to the Inquiry into Paid Maternity, Paternity and Parental Leave (Productivity Commission)
(Related to Submission No. 63)
- 11 Australian Catholic Council for Employment Relations
Opening Statement Productivity Commission Public Inquiry into Paid Maternity, Paternity and Parental Leave
(Related to Submission No. 64)
- 12 Australian Catholic Council for Employment Relations
Joint Submission to Productivity Commission Inquiry: Public Inquiry into Paid Maternity, Paternity and Parental Leave
(Related to Submission No. 64)
- 13 Australian Catholic Council for Employment Relations
Submission by the Australian Catholic Council for Employment Relation to the Wages and Allowances Review 2008

- (Related to Submission No. 64)
- 14 Ms Jeane Wells
Australian employee's right to permanent part time work
(Related to Submission No. 116)
- 15 National Pay Equity Coalition and Women's Electoral Lobby
Australia Inc
Submission to the Australian Industrial Relations Commission
(Related to Submission No. 118)
- 16 National Pay Equity Coalition and Women's Electoral Lobby
Australia Inc
Code of Practice on Equal Pay: Women. Men. Different. Equal. Equal Opportunities Commission
(Related to Submission No. 118)
- 17 PARLIAMENTARY-IN-CONFIDENCE
- 18 Victorian Local Governance Association
Participation of Women in Victorian Local Government Fact Sheet
- 19 Victorian Local Governance Association
Pay Equity and Associated Issues 24 October 2008. Key points made to Committee by Councillor Libby Mears on behalf of VLGA.
- 20 Victorian Local Governance Association
Meeting the Sustainable Price of Democracy. Final Submission for the Councillor Remuneration Review Panel November 2007

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- 21 Victorian Local Governance Association
The Sustainable Price of Democracy. Interim Submission to the Local Government Councillor Remuneration Review Panel August 2007
- 22 Victorian Local Governance Association
Moving On. Women and Retirement from Victorian Local Government
- 23 Victorian Local Governance Association
A gender agenda
- 24 Victorian Local Governance Association
Pay Equity and Associated Issues 24 October 2008. Key points made to Committee by Linda Bennet for WPILG Chair Councillor
- 25 Victorian Local Governance Association
Help Close the Gender Gap in the 2008 Council Elections
- 26 Victorian Local Governance Association
Victorian Local Government Women's Charter
- 27 Dr Sara Charlesworth
Policing, Gender and Working Time: The Case of the Part-Time Detective
- 28 Dr Sara Charlesworth
'Part-time and Part committed'?: The Challenges of Part-time Work in Policing

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- 29 Dr Sara Charlesworth
Integrating part-time work in policing services: policy, practice, and potential
- 30 Recruitment & Consulting Services Association
On-hired Workers in Australia: Motivations and Outcomes
(Related to Submission No. 42)
- 31 Recruitment & Consulting Services Association
RCSA Corporate Membership Categories of Service
(Related to Submission No. 42)
- 32 City of Whitehorse
Local Government Enterprise Agreements - "Family Friendly" Provisions as at 2 October 2008
(Related to Submission No. 89)
- 33 City of Whitehorse
Australian Municipal, Administrative, Clerical and Services Union, Victorian Local Authorities Award 2001, Australian Industrial Relations Commission
(Related to Submission No. 89)
- 34 City of Whitehorse
Australian Municipal, Administrative, Clerical and Services Union, Victorian Local Authorities Award 2001, Australian Industrial Relations Commission
(Related to Submission No. 89)

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- 35 Dr Christine Short
Persistent Australian Gender Wage Inequality 1990 to 2003 - stakeholders' views of why and how.
(Related to Submission No. 128)
- 36 Chamber of Commerce and Industry of Western Australia (Inc)
Women in the Workforce. A Discussion Paper
- 37 Local Government Association of South Australia
Local Government in SA. Gender Equity Issues
- 38 Security for Women
NFAW response to the Productivity Commission Draft Report
(Related to Submission No. 17)
- 39 National Centre for Social and Economic Modelling
Before and after school care: costs and usage of formal child care services for school age children, 1999 and 2002
(Related to Submission No. 17)
- 40 National Foundation of Australian Women, S4W
Letter to Ms Coleman from the Office of the Hon Kate Ellis
(Related to Submission No. 17)
- 41 Australian Institute of Management
Retaining Women in the Workforce
- 42 Australian Institute of Management - Victoria & Tasmania
Australian Institute of Management - News Release

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- 43 Equal Opportunity for Women in the Workplace Agency
EOWA Survey on Workplace Flexibility
(Related to Submission No. 113)
- 44 Centre for Work + Life
Not Fair, No Choice (The impact of WorkChoices on twenty South Australian workers and their households)
(Related to Submission No. 137)
- 45 Centre for Work + Life
Women and Workchoices
(Related to Submission No. 137)
- 46 National Foundation of Australian Women, S4W
Taxation, Labour Supply and Saving
(Related to Submission No. 94)
- 47 The Queensland Government
Pay Equity - Time to Act
(Related to Submission No. 135)
- 48 Department of Consumer and Employment Protection -
Government of Western Australia
Gender pay gap by year Australia and Western Australia 1988-2008
(Related to Submission No. 134)
- 49 National Foundation of Australian Women
News Release Women not treated fairly in retirement 3 March 2009
(Related to Submission No. 94)

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- 50 National Foundation of Australian Women
Submission to Henry Review of Australia's Future Taxation System
(Related to Submission No. 94)
- 51 Security for Women
Taking a Toll: The Effects of Recession on Women
- 52 Department of Consumer and Employment Protection -
Government of Western Australia
Pay equity pack
(Related to Submission No. 134)
- 53 Department of Consumer and Employment Protection -
Government of Western Australia
WA Pay Equity Audit Tool, Guidelines and instructions for use
(Related to Submission No. 134)
- 54 Department of Consumer and Employment Protection -
Government of Western Australia
WA Pay Equity Audit Tool
(Related to Submission No. 134)
- 55 Department of Consumer and Employment Protection -
Government of Western Australia
Example payroll data
(Related to Submission No. 134)
- 56 The Victorian Bar
*Victorian Government 'Government Legal Services Annual Report
2006-2007'*

(Related to Submission No. 141)

57 The Victorian Bar

Victorian Government 'Victorian Government Barrister's Briefing Report 2006-2007'

(Related to Submission No. 141)

58 The Victorian Bar

Victorian Bar Model Briefing Policy

(Related to Submission No. 141)

59 The Victorian Bar

Legal Services Directions

(Related to Submission No. 141)

60 The Victorian Bar

August 2006 Australian Women Lawyers Gender Appearance Survey of State and Territory Supreme Court and of the Federal Court

(Related to Submission No. 141)

61 The Victorian Bar

Current arrangements of the Victorian Bar to ensure fair access to training promotion after maternity leave, part time work or flexible work hours

(Related to Submission No. 141)

62 The Victorian Bar

Australian Women Lawyers' Submission to the productivity commission inquiry into paid maternity, paternity and parental leave 2 June 2008

(Related to Submission No. 141)

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- 63 The Victorian Bar
Analysis of briefing by Commonwealth agencies 2006-2007 and 2007-2008
(Related to Submission No. 141)
- 64 The Victorian Bar
Sample of recent press on unfair briefing practices
(Related to Submission No. 141)
- 65 Community and Public Sector Union (CPSU)
What women want
(Related to Submission No. 13)
- 66 Queensland Nurses' Union
Real wage increases - (NACAS v Public Sector) vs CPI from 1990
(Related to Submission No. 115)
- 67 Queensland Nurses' Union
Real wage increases - (Aged Care Providers NACAS Public Sector) vs CPI from 1990
(Related to Submission No. 115)
- 68 Australian Services Union - Queensland Services Branch
Australian Municipal, Administrative, Clerical and Services Union
- 69 Australian Services Union - Queensland Services Branch
Gender pay equity at the City of Yarra - case study

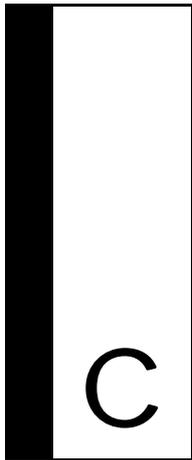
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- 70 CFMEU
Gender Mix Statistics for CFMEU Industries
- 71 Yorkcross Pty Ltd
Rodney Stinson's Speaking Points - Pay Equity Public Hearing - 1 April 2009
- 72 Victorian Government
Appearance by the Victorian Government
(Related to Submission No. 136)
- 73 WIRE Women's Information
Breaking New Group Annual Report 2008
- 74 WIRE Women's Information
Creating Family Friendly Workplace Better balance Better Business
- 75 WIRE Women's Information
Creating Family Friendly Workplaces getting the balance right
- 76 URCOT
Our sons, Our Daughters, Their Very Different Futures
- 77 URCOT
Pay Equity: How to address the Gender Pay Gap
- 78 Howard Florey Institute
NHMRC Research Funding FACTS BOOK May 2007

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- 79 Howard Florey Institute
Staff Profile 2009
- 80 Australian Council of Trade Unions (ACTU)
ACTU Australia's Future Tax System - A preliminary submission to the Review Panel 17 October 2008
- 81 Australian Council of Trade Unions (ACTU)
Pay Equity: A New Approach to a Fundamental Right
- 82 RMIT University
Audits & campaigns National Hospitality Campaign March 2009
- 83 Office for Women, FAHCSIA
Australia's combined sixth and seventh report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women
- 84 Office for Women, FAHCSIA
Australia's combined sixth and seventh report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women
- 85 National Foundation of Australian Women, S4W
Tax reform, Targeting and the Tax burden on Women
- 86 National Foundation of Australian Women, S4W
Attitudes to Maternity Leave in Australia - Auspoll

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- 87 National Pay Equity Coalition and Women's Electoral Lobby
Australia Inc
Gender and the minimum wage
(Related to Submission No. 118.3)
- 88 Equal Opportunity for Women in the Workplace Agency
*Pay, Power & Position Beyond the 2008 EOWA Australian Census of
Women in Leadership*
- 89 Equal Opportunity for Women in the Workplace Agency
*EOWA Survey on Paid Maternity Leave, Sex-based Harassment
Initiatives and the Gender Pay Gap*
- 90 New Zealand Department of Labour
Equitable Job Evaluation - A User's Guide
(Related to Submission No. 148)
- 91 New Zealand Department of Labour
Equitable Job Evaluation Factor Plan - Working towards Gender Equity
(Related to Submission No. 148)
- 92 New Zealand Department of Labour
Equitable Job Evaluation Questionnaire
(Related to Submission No. 148)
- 93 New Zealand Department of Labour
*Gender Bias in Job Evaluation: A Resource Collection - Extracts of
Recommended Readings and Resources*
(Related to Submission No. 148)

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- 94 New Zealand Department of Labour
A Guide to the Gender-inclusive Job Evaluation Standard - NZS 8007:2006
(Related to Submission No. 148)
- 95 New Zealand Department of Labour
Pay and Employment Equity Analysis Tool (PEEAT) Version 2.3 - User Guide
(Related to Submission No. 148)
- 96 New Zealand Department of Labour
Excel component of the Pay and Employment Equity Analysis Tool
(Related to Submission No. 148)
- 97 Equal Opportunity for Women in the Workplace Agency
EOWA Gender Pay Equity Survey Questions for Reporting Period 2008-2009 Preliminary Results
- 98 National Ethnic Disability Alliance
NEDA submission to the National Mental Health and Disability Employment Strategy
(Related to Submission No. 154)
- 99 Office for Women, FAHCSIA
Review of the Equal Opportunity for Women in the Workplace Act 1999 - Issues Paper
(Related to Submission No. 112)

- 100 Office for Women, FAHCSIA
Gender Earning Differentials in Australia a Statistical Overview of Women's Earnings
(Related to Submission No. 112)
- 101 Office for Women, FAHCSIA
Overview: Women's Indepartmental Committee
(Related to Submission No. 112)



Appendix C - List of hearings and witnesses

Thursday, 18 September 2008 - Canberra

Department of Education, Employment and Workplace Relations

Ms Sandra Parker, Group Manager, Workplace Relations Policy Group

Mr Mark Roddam, Branch Manager

Ms Sue Sadauskas, Assistant Secretary

Thursday, 25 September 2008 - Canberra

Department of Families, Housing, Community Services and Indigenous Affairs

Ms Cate McKenzie, Executive Director, Office for Women

Ms Sally Moyle, Branch Manager, Women's Branch, Office for Women

Ms Natalie Cartwright, Assistant Director, Policy Section

Friday, 26 September 2008 - Sydney

Individuals

Dr Anne Junor

Dr Michael Lyons

Dr Meg Smith

Australian Institute of Management

Dr Jennifer Alexander, Chief Executive Officer, New South Wales and Australian Capital Territory

Mr Matthew Drinan, Manager, AIM Research & HR Consulting

Community and Public Sector Union

Miss Rhiannon Carter, Research Officer

Mr Stephen Jones, National Secretary

Ms Alison Rahill, Parliamentary Liaison

Dr Kristin van Barneveld, Director, Policy and Research

Diversity Council Australia

Ms Nareen Young, Executive Director

Equal Employment Opportunity Network of Australasia

Ms Juliet Bourke, Chair

Equal Opportunity for Women in the Workplace Agency

Ms Anna McPhee, Director

Ms Cheryl Seeto, Policy & Publications Officer

Ms Mairi Steele, Policy Manager

Thursday, 16 October 2008 - Canberra**Australian Public Service Commission**

Mr Paul Casimir, Director, Policy and Partnerships

Ms Linda Kendell, Director, Evaluation Group

Ms Susan Kurtjak, Acting Group Manager, Better Practice

Ms Nicole Pietrucha, Group Manager, Evaluation

Mr Roger Tarlinton, Director, Employment Framework

Thursday, 23 October 2008 - Canberra**Police Federation of Australia**

Mr Mark Burgess, Chief Executive Officer
Ms Prue Burgun, Women's Advisory Committee Member
Mrs Dianne Gayler, Policy Advisor

Friday, 24 October 2008 - Melbourne**Australian Institute of Interpreters and Translators Inc**

Mr John Gare
Mrs Sarina Phan, National President

Australian Institute of Superannuation Trustees

Mr Andrew Barr, Policy and Research Manager

Australian Nursing Federation

Mr Nicholas Blake, Federal Industrial Officer
Ms Gerardine Kearney, Federal Secretary

City of Greater Geelong

Mr Howard Oorloff, Manager, Organisation Development

City of Melbourne

Ms Samantha Stanton, Team Leader, HR Consulting

City of Whitehorse

Ms Pauline Bennett, Manager, Organisation Development

Federation of Ethnic Communities Councils of Australia

Ms Voula Messimeri, Chair
Mr Peter Van Vliet, Director

Recruitment & Consulting Services Association

Mr Charles Cameron, Manager - Policy

Victorian Local Governance Association

Ms Linda Bennett, Women's Policy Officer

Wednesday, 5 November 2008 - Perth**Individuals**

Associate Professor Siobhan Austen

BPW Australia

Ms Maidie Brockman, Member

Mrs Sandra Cook, Director of Policy

Business School, The University of Western Australia

Dr Patricia Todd, Senior Lecturer, IR and HR; Co-Director Consortium for Diversity at Work

Chamber of Commerce and Industry of Western Australia (Inc)

Ms Marcia Kuhne, Director, Workplace Relations Policy

Equal Opportunity Commission of Western Australia

Ms Yvonne Henderson, Commissioner for Equal Opportunity

Unions WA

Ms Simone McGurk, Assistant Secretary

Thursday, 6 November 2008 - Adelaide**Flinders University**

Mr Joshua Healey, Research Assistant, National Institute of of Labour Studies

Local Government Association of South Australia

Mr Robert Wallace, Human Resource Manager

National Centre for Vocational Education & Research

Dr Thomas Karmel, Managing Director

Working Women's Centre

Ms Sandra Dann, Director

Thursday, 13 November 2008 - Canberra**Australian Bureau of Statistics**

Mr Michael Gerrity, Assistant Director, Labour Market Statistics NSC

Mr Robert McColl, Assistant Statistician, Social Conditions Statistics Branch

Mr Paul Sullivan, Assistant Statistician, Labour and Demography Statistics Branch

Ms Sue Taylor, Director, Labour Market Statistic Section

Thursday, 27 November 2008 - Canberra**National Centre for Social and Economic Modelling, University of Canberra**

Ms Rebecca Cassells, Research Fellow

Dr Justine McNamara, Senior Research Fellow

National Foundation of Australian Women, S4W

Ms Marie Coleman, Chair, Social Policy Committee

Security 4 Women

Ms Elly Buckley, Network Co-ordinator

Thursday, 4 December 2008 - Canberra**Australian Institute of Management (Victoria and Tasmania Branch)**

Ms Susan Heron, Chief Executive Officer

Thursday, 5 February 2009 - Canberra**The Pharmacy Guild of Australia**

Mrs Lillian Chen, NSW Branch Committee Member

Ms Ann Dalton, Director, Government Relations and Policy

Miss Amanda Galbraith, ACT Branch President

Thursday, 12 February 2009 - Canberra

National Foundation of Australian Women

Ms Vicki Buchanan, Board Member

Ms Jenni Colwill, Vice President

National Foundation of Australian Women, S4W

Ms Marie Coleman, Chair, Social Policy Committee

Thursday, 26 February 2009 - Canberra

**Department of Consumer and Employment Protection - Government of Western
Australia**

Ms Jenness Gardner, Manager, Labour Relations Division

Thursday, 12 March 2009 - Canberra

Australian Catholic Bishops Conference

Ms Susan O'Connor

Mr Frank Quinlan

Thursday, 19 March 2009 - Canberra

Individuals

Dr Christine Short

Tuesday, 31 March 2009 - Brisbane

Anti-Discrimination Commission Queensland

Ms Susan Booth, Commissioner

Ms Neroli Holmes, Deputy Commissioner

Australian Services Union

Ms Julie Bignell, Branch Secretary

Ms Jo Justo, National Industrial Officer

Ms Henrietta Moran, National President

Independent Education Union of Australia - Queensland and Northern Territory Branch

Miss Sophie Ismail, Industrial Officer

LHMU

Ms April Anderson, Delegate and Member, Queensland Branch

Ms Nikki Boyd, Organiser, Queensland Branch

Ms Avalon Kent, Industrial officer, Queensland Branch

Local Government Association of Queensland

Mr Tony Goode, Director, Workforce and Organisational Services

Queensland Council of Unions

Ms Lorin Booth, Industrial Officer

Ms Amanda Richards, Assistant General Secretary

Queensland Industrial Relations Commission

Commissioner Glenys Fisher

Queensland Nurses' Union

Mr Steven Ross, Industrial Officer

Dr Liz Todhunter, Research & Policy Officer

Wednesday, 1 April 2009 - Sydney**Australian Human Rights Commission**

Ms Elizabeth Broderick, Sex Discrimination Commissioner

Ms Somali Cerise, Senior Policy & Research Officer

Dr Cassandra Goldie, Director, Sex Discrimination Unit

Construction Forestry Mining and Energy Union

Mr John Sutton, National Secretary

Kingsford Legal Centre

Ms Shirley Southgate, Principal Solicitor

Restaurant and Catering Australia

Mr John Hart, Chief Executive Officer

Women into Politics

Ms Anne Barber, Committee Member

Ms Joan Bielski,

Ms Barbara McGarity, President

Yorkcross Pty Ltd

Mr Rodney Stinson, Principal Labour Market Analyst

Thursday, 2 April 2009 - Melbourne**Association of Professional Engineers, Scientist and Managers Australia
(APESMA)**

Ms Karinda Flavell, National Research Officer

Ms Erin Wood, Director, Professional Services and National Womens
Coordinator

National Australia Bank

Ms Dorothy Hisgrove, Head of People Engagement and Change

Mrs Susan Sieber, Diversity Adviser

RMIT University

Dr Sara Charlesworth, Senior Research Fellow, Centre for Applied Social
Research

The Australasian Institute of Mining & Metallurgy

Ms Donna Frater, Chair, Women in Mining Network

Ms Monika Sarder, Manager, Policy and Advocacy; Editor of The
AusIMM Bulletin

**Victorian Government, Department of Innovation, Industry and Regional
Development**

Mr Russell Bancroft, Acting Director, Workplace Industrial Relations,
Policy and innovation

Ms Sarah Tuberville, Policy Adviser

Victorian Trades Hall Council

Ms Samantha Bond, Women's Officer

Ms Barbara Jennings, Women's Officer

Ms Jennifer O'Donnell-Pirisi, VTHC Women's Officer

Ms Ann Taylor, President

WIRE Women's Information

Ms Joanna Argent, Communication Coordinator

Ms Samiro Douglas, Chief Executive Officer

Women's Health Victoria

Ms Marilyn Beaumont, Executive Director

Ms Petra Begnell, Policy & Health Promotion Manager

Friday, 3 April 2009 - Melbourne

Australian Council of Trade Unions (ACTU)

Ms Catherine Bowtell, Senior Industrial Officer

Ms Belinda Tkalcevic, Legal/Industrial Officer

Finance Sector Union of Australia

Ms Susan Kenna, National Industrial Officer

Mr Rodney Masson, National Director - Policy & Communications

Howard Florey Institute

Dr Siew Yeen Chai, Senior Research Fellow

Dr Elisa Hill, Senior Research Officer

Mr Rodi Neri, Human Resources Manager

Union Research Centre on Organisation and Technology

Ms Robyn Dale, Director

Thursday, 14 May 2009 - Canberra

National Pay Equity Coalition

Ms Fran Hayes, Spokesperson

National Pay Equity Coalition and Women's Electoral Lobby Australia Inc

Ms Suzanne Hammond, Industrial Relations Spokesperson

Thursday, 28 May 2009 - Canberra**ACT Council of Social Services**

Ms Roslyn Dundas, Director

Women's Centre For Health Matters

Ms Marcia Williams, Executive Director

Thursday, 4 June 2009 - Canberra**Women with Disabilities Australia**

Ms Susan Salthouse, Vice-President

Thursday, 18 June 2009 - Canberra**Law Council of Australia**

Ms Noor Blumer, Chair, Equalising Opportunities in the Law Committee

Ms Carole Caple, Policy Lawyer

The Victorian Bar

Ms Fiona McLeod, Chair, Equal Opportunity Committee

Ms Meredith Schilling, Member

Thursday, 25 June 2009 - Canberra**Aged & Community Services Tasmania**

Mr Darren Mathewson, Chief Executive Officer

Tuesday, 11 August 2009 - Canberra**Close the Gap**

Ms Emma Ritch, Manager

Thursday, 13 August 2009 - Canberra**New Zealand Department of Labour**

Ms Philippa Hall, Director, Pay and Employment Equity Unit

Thursday, 20 August 2009 - Canberra**Department of Education, Employment and Workplace Relations**

Ms Louise McDonough, Branch Manager

Ms Sandra Parker, Group Manager, Workplace Relations Policy Group

Mr Mark Roddam, Branch Manager

**Department of Families, Housing, Community Services and Indigenous Affairs,
Office for Women**

Ms Julia Burns, Executive Director

Ms Sally Moyle, Branch Manager

Ms Therese Smith, Assistant Director

Equal Opportunity for Women in the Workplace Agency

Dr Kathy MacDermott, Senior Advisor

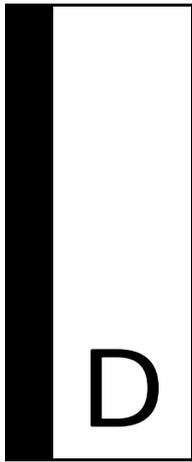
Ms Mairi Steele, Acting Director

Thursday, 10 September 2009 - Canberra**Department of the Treasury**

Mr Philip Gallagher, Manager, Retirement and Intergenerational Modelling Unit

Mr Christopher Leggett, Adviser, Personal, Retirement and Income Division

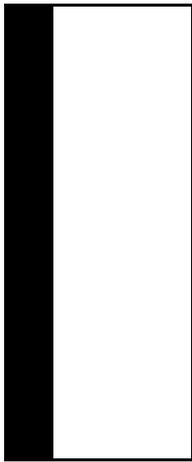
Ms Erica Lejins, Senior Adviser, Personal, Retirement and Income Division



Appendix D - Glossary

Awards	Instruments made by the Australian Industrial Relations Commission containing enforceable minimum terms and conditions of employment.
Discrimination (direct and indirect)	Direct discrimination occurs when someone is treated unfairly or less favourably in the same or similar circumstances because, for example, of gender or race. Indirect discrimination occurs when there is a rule, policy, practice or procedure that is the same for everyone, but has an unequal or disproportionate effect for a specific group of people.
Enterprise Agreement	Enterprise agreements are agreements made at an enterprise level between employers and employees about terms and conditions of employment.
Fair Work Australia	The independent, national workplace relations tribunal established under the Fair Work Act 2009. FWA assumed most of the functions of the Australian Industrial Relations Commission and the Australian Fair Pay Commission.
Fair Work Ombudsman	A statutory appointee whose role is to

	impartially assist in, and enforce compliance with, Commonwealth workplace laws.
Gender Wage Gap	The difference between male and female earnings as a proportion of male earnings
Gender wage relativities	Female earnings as a proportion of male earnings
National Employment Standards	A set of 10 minimum employment standards that will apply to all employees within the federal system from 1 January 2010.
Pay Equity	Women and men receiving the same pay, benefits and conditions for work of equal or comparable value. The remuneration of work through proper valuing of work which is free from gender bias.



Minority Report

Introduction and Summary of Coalition Members' Position

On Thursday 26 June 2008 the Acting Minister for Employment and Workplace Relations, The Hon Brendan O'Connor MP, asked the Committee to inquire into, and report on, pay equity and associated issues related to increasing female participation in the workforce.

The Committee has heard extensive evidence from a large number of witnesses in accordance with the Committee terms of reference which required this inquiry to look into the causes of any existing disadvantages in relation to women's participation in the workforce.

In broad terms, the evidence presented to the Committee confirmed that there is indeed a divergence between the experiences of male and female persons within the Australian workforce. The evidence confirmed that participation rates, remuneration outcomes and other conditions within the workforce can in fact be linked to gender. Where such a link can be established, females often experience outcomes that are inconsistent with the same outcomes experienced by males.

In short, as the Government majority report observes in detail, Coalition committee members recognise that there is in fact work to be done to appropriately address pay equity and related matters to increase the rate of female participation in the workforce. The Government majority report makes a large number of recommendations which are framed as being avenues to consider on the path towards addressing issues within the Committee's scope of reference.

While the Coalition accepts that these recommendations, if adopted, might facilitate their stated aims, we believe that there are other factors of relevance that have prevented us from accepting all of them unreservedly at this time.

Those relevant factors are discussed within this report and primarily include recent legislative and other developments associated with the *Fair Work Act 2009*, the future system of paid maternity leave and a broad desire to ensure the implementation of options that are effective and without unintended or adverse consequence.

Coalition members believe that the issue of pay equity and increased female participation in the workforce is much too important to be addressed with anything but a considered and strategic approach. The evidence before the Committee demonstrates that achieving pay equity and increasing the rate of female participation in the workforce has been a arduous journey thus far and that there remains a long way to go.

Simply put, there is no 'quick fix' to this issue and therefore any recommendations should be considered as solid building blocks to achieve and consolidate equity rather than an artificial structure that may be ineffective or counter productive in the long term.

Evidence provided to the Committee

The nature and content of evidence provided to the Committee has been exhaustively detailed within the Government majority report and does not require reproduction here.

Coalition members do note, however, that the majority of evidence adduced came from organisations, individuals or groups who can be categorised as being more likely to be aware of issues related to pay equity and workforce participation. Such evidence is particularly valuable and helpful to Coalition members as it enabled succinct opportunities to examine the nature, causes and effect of existing equity and participation issues.

This evidence also resulted in a number of recommendations contained within the Government majority report. However, such recommendations are, in many areas, intended to operate in a manner that will impact on *all* stakeholders and not just those who are particularly aware of the issue at hand.

To this end, Coalition members note the comparative absence of evidence from other relevant stakeholders, particularly those in the private sector. This is, of course, understandable and it is traditionally rare that, for example, a small retail business will possess the resources and time to attend such a parliamentary enquiry and provide a considered submission. Notwithstanding this observation,

many of the recommendations contained in the Government majority report will, or are likely to, affect and impact private sector business, particularly small business.

Coalition committee members believe that it would have been valuable to hear more evidence from private sector stakeholders. While it may be eminently practicable and feasible for a non-private sector stakeholder, such as local government, to implement and comply with various recommendations, the same cannot also be said for those in the private sector.

Fair Work Act 2009

A great deal of evidence presented to the Committee has focussed on the issue of workplace relations. This is unsurprising given the role and purpose of workplace relations legislation within a context of pay and workforce participation.

A number of recommendations made in the Government majority report also focus on alterations that can be made to our workplace relations legislation.

Coalition members of the Committee are mindful that Labor's new workplace system, underpinned by the *Fair Work Act 2009*, is in its infant stages. The Act commenced on 1 July 2009 and will only take full *comprehensive* effect on 1 January 2010. It introduces a number of concepts that are new to Australian workplaces, such as an expanded set of National Employment Standards (NES), a new award system (modern awards) and a new good faith collective agreement bargaining architecture. In short, the new Act represents a fundamental change to the underpinning structure of the Australian workplace system.

At the time the *Fair Work Bill 2008* was introduced, and subsequent thereto, the Government and the Minister for Employment & Workplace Relations have variously described the intention and aim of the new laws. It is unnecessary to repeat that narrative verbatim, except to note that much has been made of the alleged failings of the *Workplace Relations Act 1996* and how the *Fair Work Act 2009* addresses those failings.

Statements were made that the new laws would "...assist employees to balance their work and family responsibilities by providing for flexible arrangements..."¹ and provide "*protection and hope for a better future for the low-paid; a balance between work and*

1 Minister for Employment & Workplace Relations, Fair Work Bill 2008, Second Reading Speech, 25th November 2008, House of Representatives Hansard, 11190

*family life..."*² and that *"Employees with carer's responsibilities will also now be protected from discriminatory treatment."*³

In a recent doorstep interview, the Minister continued this narrative:

"Work Choices was a regime that was bad for women, bad for women workers because we didn't have fair principle when it came to pay equity, we didn't have a recognition of work of comparable value and bad for women workers because Australian Workplace Agreements could slash away pay and conditions and all the evidence showed that it was women workers who paid the price of that slashing.

We've now put a fair work regime in place, a safety net that can never be stripped away, a fair bargaining system, a new bargaining system for low paid workers, all of this is good news for women and we want there to be a fair principle for recognising work of comparable worth. That's what the Fair Work Act provides and that's what the test case will be about."⁴

The test case referred to above is an even more recent development. Announced on 4 November 2009, the case will involve a test of the equal remuneration provisions in the Fair Work Act 2009. Specifically, there will be a focus on workers engaged in the social and community services sectors – a sector about which much evidence was presented to the Committee.

The announcement of this test case was reported as:

"The proceeding is likely to be divided into two parts, with FWA first to set down the general principles governing the making of equal remuneration orders, and then apply those principles to the SACS workers.

ASU assistant secretary Linda White says the "landmark" case could pave the way for improved wages for low-paid female workers across a range of sectors.

"This is historic because it's the first opportunity under the Fair Work Act for the equal pay principles to be set - that is significant for the women of Australia, and given that the 87% of employees

2 Minister for Employment & Workplace Relations, Fair Work Bill 2008, Second Reading Speech, 25th November 2008, House of Representatives Hansard, 11189

3 Minister for Employment & Workplace Relations, Fair Work Bill 2008, Second Reading Speech, 25th November 2008, House of Representatives Hansard, 11193

4 Minister for Employment & Workplace Relations, Doorstop Interview, South Melbourne, 9th November 2009

in the [SACS] industry are women and they are at the front line in seeking social justice for others it is fitting that they are the ones to start the new era," she says.

Labor's introduction of stronger equal remuneration provisions, particularly through the new "comparable value" test, has paved the way for the application, White says."⁵

In a related interview about the test case, the Minister said:

"I think change has come, a lot has changed for women workers and we should remember that and our Fair Work Act is bringing some more changes, some more flexibility to help people, particularly women workers, balance up work and family life at the time that they have a child. Out paid parental leave scheme will make a difference so change is being made step by step, piece by piece.

There is more that needs to be done and this pay equity case is part of the more that needs to be done."⁶

From the above narrative, it is reasonable to draw two succinct observations. Firstly, that the structure of the new *Fair Work Act 2009* as it relates to equal remuneration is considered to be an improvement to the related provisions in the *Workplace Relations Act 1996*; and secondly, that the impending test case will establish principles to address pay equity and by default improve the levels of female participation rates in the workforce.

It is against this background that the Coalition members of the Committee are somewhat perplexed by the recommendations of the Government majority regarding changes to the *Fair Work Act 2009*.

Such recommendations can only represent an acknowledgement that the *Fair Work Act 2009* does not achieve the aims and intentions stated by the Minister and others at the time of its passage through Parliament.

In addition, it is clearly the case that the recommendations were crafted at a time prior to the announcement of the impending pay equity test case.

Regardless of what the recommendations represent, Coalition members believe that it is simply too early to be endorsing recommendations that alter the aims,

5 "ASU wins government backing for "historic" first pay equity bid" Workplace Express, 4th November 2009

6 Minister for Employment & Workplace Relations, Doorstop Interview, South Melbourne, 9th November 2009

operation and outcome of a legislative regime that has yet to take full effect, or be appropriately tested.

The narrative espoused by the Minister and others would lead most to believe that the majority of the recommendations affecting the *Fair Work Act 2009* would be unnecessary. In addition, it is likely that the impending test case will progress that task of addressing issues of pay equity and levels of female participation in the workplace.

Coalition members believe that, given the new nature of the new workplace regime, it should be given time to be appropriately bedded down and then critically examined to determine its impact on the matters falling within this Committee's scope of reference.

Although the recommendations of the Government majority may advance the cause of pay equity and female workforce participation, it is premature to endorse them unreservedly at this time given the new workplace relations regime and impending test case.

Maternity Leave

Recent discourse surrounding maternity leave, particularly paid maternity leave, has also refocused public discussion about the opportunities for females within the workforce.

Evidence before the committee noted a relationship between maternity leave and pay equity/participation rate discrepancies, observing that a female who takes maternity leave is likely to earn less than a male who does not.

Access to unpaid maternity leave exists in both State and Federal systems of workplace relations. The NES for maternity leave, provided under the *Fair Work Act 2009*, expanded the previous minimum entitlement and was described by the Minister in this way:

“Our new National Employment Standards will deliver that flexibility and choice, giving mum and dad a choice to sequence their unpaid maternity leave and unpaid paternity leave to have a parent at home with a newly born child for the first two years of the child’s life. And our National Employment Standards will also give the ability for one carer, usually the mum, to request an extra 12 months of unpaid maternity leave and to request the ability to

return flexibly or part time. That's part of our National Employment Standards."⁷

Once again, the NES for maternity leave under the *Fair Work Act 2009* remains in its infant stages and, should the view of the Minister be correct, provides broader options for females than have existed previously. This ought to have a positive influence on matters falling within the scope of this Committee's inquiry.

However, in addition to the NES, now we have a commitment from the Government to introduce a system of paid maternity leave (PML) available on and from 1 January 2011. It is understood that consultations about the practical implementation of PML are currently underway and yet to reach a final form.

Whatever the outcome, we are told that the implementation of PML should have a positive effect on both pay equity and female labour market participation rates.

Such a system of PML will require time to be appropriately implemented and then critically examined and assessed to determine the extent to which such a scheme delivers positive outcomes.

It is for this additional reason that the Coalition members of the Committee do not unreservedly endorse the entire raft of recommendations in the Government majority report. The impending system of PML, combined with a new workplace relations regime, should be allowed time to bed down and then be further assessed to determine the extent to which they address the concerning evidence presented to the Committee.

Government must take the lead

Much of the evidence presented to the Committee came from sectors that, in one form or another, are supported or funded by State Governments, Federal Governments, or a combination of both. This is particularly the case in the social and community services sector, where the evidence presented to the Committee was most compelling.

We earlier noted our concern at the comparative lack of evidence from the private sector regarding matters within the scope of this committee's inquiry. We take the view that while various recommendations may be capable of easy compliance in the government sector, this may not be the case in the private sector (or at least, there is not enough evidence for the committee to make a considered decision.)

We are therefore in the position where many of the recommendations contained in the Government majority report are unsupported by evidence demonstrating that

7 Minister for Employment & Workplace Relations, Joint Press Conference, Newcastle, 29th September 2008

should they be adopted in the private sector, that they would in fact achieve their stated aims.

To this end Coalition members take the view that, were the Government mindful of adopting the recommendations in this report, they should in the first instance be applied only to public sector agencies to determine the extent to which they have a practical and measurably positive impact.

There is, in our view, no benefit to be gained from requiring private sector involvement in the recommendations until they can be demonstrated as positively influencing pay equity and female workforce participation.

Any future Parliamentary inquiries into pay equity and associated issues should be tasked with evaluating the effectiveness of such recommendations within the public sector, prior to any application to the private sector.

Coalition members are mindful that the recommendations considered in the Government majority report are capable of coming at a cost. This cost is, currently, unquantifiable.

However the recent decision of the Queensland Industrial Relations Commission about pay equity, which we understand to align with the impending test case under the *Fair Work Act 2009*, delivered with it an increase in wages for certain workers. Reports suggest that this decision alone required the Queensland State Government to increase its funding for the social and community services sector by \$414 million dollars per year.

It follows that a similar decision at a Federal level will also require an increase in the amounts allocated by all levels of Government for the SACS sector.

Coalition members, therefore, believe that the Government must take the lead in this area. Any recommendations made by the Government majority report should be, in the first instance, limited to the public sector to allow them to be appropriately monitored.

More information required

The Coalition believes that more research and impact analysis should be undertaken to determine the effect of the Government recommendations and the extent to which they are capable of compliance.

We acknowledge that many workplaces are sophisticated and well resourced and would be able to accommodate and comply with many of the recommendations contained in the Government report. However, there are equally as many, if not more, that do not enjoy such a position and who may find it difficult to comply with said recommendations should they be adopted.

From a practical and realistic perspective, it would be a perverse outcome if the requirements so recommended act as a disincentive to employment or an incentive to exacerbate existing problems associated with pay equity. We do not want to see the pursuit of solutions to a problem create a series of new and unintended problems.

Therefore a simple analysis of the cost and benefits should be undertaken with respect to all of the recommendations to the extent that they would apply to the private sector. Such analysis would have been a requirement for Coalition members to unreservedly agree to the recommendations in the Government majority report.

Conclusion

Coalition members are satisfied that there is a gap between the workforce experiences of males and females and that there is work to be done to reduce or eliminate this gap.

However, we are unable to unreservedly endorse the recommendations of the Government majority at this time. Existing and forthcoming developments within, and related to, the areas of workplace relations legislation, paid maternity leave and other relevant considerations cause us to believe that it would be premature to implement the recommendations in total.

A better approach would be, in our view, to examine and assess these developments once they have been completed to determine the extent to which the gap has been reduced. We are hopeful that the problem confirmed by the evidence would be far less at that time.

Mr Barry Haase MP
Deputy Chair

Mr Michael Keenan MP

Mr Rowan Ramsey MP

Dr Andrew Southcott MP