

Senate Education, Employment and Workplace Relations Committee

Inquiry into the

Equal Opportunity for Women in the Workplace Amendment Bill 2012

Supplementary Submission of the Finance Sector Union of Australia

In response to questions to FSU at Senate Committee Hearing on 18 April 2012, we submit the following Supplementary Submission.

1. The Gender Pay Gap in the Finance Sector

The Finance Sector has one of the largest pay gaps of any industry. Based on the most recent comprehensive data, there was an average pay gap of 29% between the pay of men and women in May 2010.¹

There are many reasons for the pay gap which can be characterized as being caused by a range of 'discretionary' payments (please view attached FSU "Diversity 4" Information Sheet). These payments sit on top of minimum payments made under awards and agreements which have minimal "classification structures" without comprehensive level descriptors or clear relativities between jobs.

In addition, there has been a simplistic valuing of market driven 'sales' jobs over more service oriented roles; the former have traditionally attracted men more than women.

Results of 2 pay equity audits at NAB have found where pay gaps exist between men and women in the same role; these are mainly due to varying incentives paid to employees. For example, financial planners who are men who have not had career breaks and have had long periods of tenure may attract longer-term 'commission trails' which lead to consistently higher incomes. These jobs are high paying and reward long hours of work and the establishment of long-term networks; they are often not designed in ways that make them accessible to women with caring responsibilities.

At hearing on 18 April 2012 (Hansard proof copy of transcript) Ms. Kenna stated that the (gender pay gap) at NAB had:

"come down by about, I think, four or five per cent since the last pay equity audit that we did five years ago. And it is lower than the average". By way of clarification, in fact the pay gap at NAB based on average salaries of men and women has come down by almost 8% in the five years since completion of the last audit.²

¹ Source: *Employee Earnings and Hours Australia*, 6306.0, ABS May 2010. This catalogue uses average hourly ordinary time earnings figures for full time adult non-managerial employees. This data is useful as it allows for the fact that men generally work more hours than women, it is not influenced by overtime earnings and it does not include managerial salaries that can distort average wages.

² The results of the 2nd audit, in 2011/12 are yet to be publicly released.

2. FSU engagement with Government over gender equality and pay equity.

The FSU has made various approaches to Government around our significant pay gap, and in particular around the need for stronger regulation to enforce employers' approaches to gender equality.

These include Submissions to the House of Representatives *Inquiry into Gender Pay Equity and Associated issues*,³ and meetings with then MP XXXXXX and Senator XXXXXX around the issue (both meetings occurred on 11 March 2010).

In addition, we have written to two successive Ministers for Women under the current Government, and had a response from one of these (attached).

3. FSU engagement with finance sector employers over gender equality and pay equity

Focused engagement with finance sector employers over pay equity commenced in July 2006, when FSU held an Industry Pay Equity Symposium. The Symposium – *Pay Equity: A Way Forward* - was sponsored by NAB and the (then) Industrial Relations Victoria, who were then working with FSU on the first pay equity audit at NAB.

Each of the major banks attended the Symposium, except the Commonwealth Bank of Australia who sent their apologies on the eve of the Symposium.

Since this time, FSU has undertaken 2 gender equity audits with NAB, the 2nd of which is still in progress.⁴ We have also had clauses related to gender pay equity work in enterprise agreements with the following organizations:

- Zurich Insurance
- Members' Equity Bank
- St. George Bank
- Bank of Queensland
- BankWest

Of the above, preliminary discussions commenced with ME Bank, St. George and Bank of Queensland in the last few years before internal restructures and changes in lines of responsibility saw these projects stall. ME Bank are committed to a pay equity project with FSU from 2012.

Discussions have just recommenced with BankWest to undertake a gender pay audit this year.

Of the major banks, only **NAB** have been willing to be transparent and work jointly with FSU, since a pay equity clause was first inserted in their Enterprise Agreement with FSU in 2006.

³ The comprehensive report of the Inquiry was published as *Making it Fair: Pay Equity and associated issues to increasing female participation in the workforce*; House of Representatives Standing Committee on Employment and Workplace Relations, November 2009.

⁴ For the publicly available report of the first audit, see *Putting Pay Equity into Practice: Pay Equity and the Productive Workplace. A Case Study of the NAB/FSU Pay Equity Audit*, IRV, August 2007.

Below is a summary of our approaches to major employers around gender equality, and pay equity in particular.

FSU had dealings with Mr. XXXXXX, then Head of Employee Relations at St. George Bank in 2007/08 around a pay equity project with the Bank. When Westpac took over St. George Bank in 2008, Mr. XXXXXX was ultimately appointed to the role of Head of Employee Relations and Policy, Group HR, Westpac Group.

The prospect of working with **Westpac** on a pay equity project was raised by FSU during bargaining negotiations in 2009/10. The parties could not agree to work jointly on such a project and the most FSU were able to achieve was agreement that Westpac would provide analysis of pay outcomes and take-up of IFAs, by gender.⁵

Between 2008-2010, the (then) FSU Director of Campaign and Bargaining (Sydney) XXXXXX made a couple of informal requests for Westpac Diversity staff to meet with herself and XXXXXX, Senior Policy and Research Officer (responsible for Diversity and Pay Equity). No such meeting was forthcoming.

In 2010 when FSU continued to negotiate a separate agreement with St. George Bank, the Union sought to carry over the pay equity clause which had existed in the previous St. George/FSU Agreement.⁶ The Bank's response was that Westpac was conducting a group-wide review of pay by gender and therefore St. George was unable to 'go it alone' on this matter.

The next time FSU approached Westpac was following the appearance of CEO, Gail Kelly on the ABC Q & A television program on 7 March 2011 (<http://www.youtube.com/watch?v=ONCQwf3ClRc>) and transcript attached.

Ms. Kelly maintained that Westpac did not have a gender pay gap. In response to Ms. Kelly's stated willingness that she was happy to have discussions about pay, XXXXXX, the new FSU Director of Campaign and Bargaining (Sydney) followed this up with the Bank.

Ms. XXXXXX approached Mr. XXXXXX stating that the FSU wanted to take up Ms. Kelly's invitation to meet and to bring a member delegation to the meeting. Mr. XXXXXX advised that he would make the request. When followed up shortly thereafter, Mr. XXXXXX advised that they were 'working on a date'. Eventually, after Ms. XXXXXX followed up several times with Mr. XXXXXX, he admitted that a meeting with Ms. Kelly would not be possible, but instead he offered a meeting with Westpac's person responsible for Diversity.

Ms. XXXXXX again pushed for a meeting with Gail Kelly, noting that FSU would then meet with Westpac's Head of Diversity once this initial meeting had occurred. She again chased this up several times and was eventually told that the Diversity person at Westpac had changed roles and the role was presently being filled.

Ms. XXXXXX recalls that some time after Ms. Kelly made the appearance on Q & A, Ms. Kelly made another public statement about how good Westpac was in 'recognising women'. Ms. XXXXXX again requested a meeting with Ms. Kelly, via Mr. XXXXXX. There always seemed to be some excuse for Westpac not meeting with us on this issue; Westpac will not engage with

⁵ *Westpac Group Enterprise Agreement, 2010*. [2010] FWAA 4996

⁶ *St. George Bank Enterprise Agreement 2010* [2010] FWAA 9270

FSU on diversity and the gender pay gap. All of the above approaches occurred from Ms. XXXXXX between March and September 2011.

More recently on 3 April 2012, Ms. XXXXXX, FSU National Secretary XXXXXX and Local Enterprise Secretary (NSW/ACT) XXXXXX met with Westpac to go through a series of issues that the Bank and FSU could work more closely on. FSU listed the gender pay gap as an item for consideration. Ms. XXXXXX intends to formally follow-up from this meeting to ask for a briefing on Westpac's diversity and pay equity work and how the union can become involved to reduce the gender pay gap.

In respect to the **Commonwealth Bank of Australia**, there had been no substantive discussions between FSU and the Bank in relation to diversity or equality issues, prior to 2010. Indeed prior to this time FSU had a fraught relationship with the Bank on most issues, including key industrial issues.

During enterprise bargaining negotiations in 2010 FSU raised the union's key claim for joint work on pay equity. These discussions did not result in any enterprise bargaining provision. Instead a letter was received from Ms. XXXXXX, Group Executive, Human Resources and Group Services, committing the Bank to quarterly meetings with FSU around 'gender equity issues' (attached). The letter makes it clear that any joint work would not be forthcoming. It also implies meetings at a very high level within the bank, to consult, but would in our view make it difficult to understand how gender equality is operating *at the workplace level*. Nevertheless, this commitment was greater than there had been in the past around gender issues.

The first meeting between the Bank and FSU occurred on 15 December 2010 between Ms. XXXXXX, Mr. XXXXXX – Head of Workplace Advisory Group, Human Resources, Ms. XXXXXX, Director Campaign and Bargaining (Melbourne) and CBA Executive Officer, FSU, and Ms. XXXXXX, Senior Policy and Research Officer, FSU.

This meeting was a high level briefing, with Ms. XXXXXX explaining CBA goals around women in leadership, FSU discussing our concerns around pay equity, some scoping-out of what the parties might share, and agreement that the subsequent meeting would include a CBA Diversity expert.

A second meeting was held on 20 April 2011 with Mr. XXXXXX, Local Executive Secretary, (NSW/ACT) attending with XXXXXX of FSU. This meeting involved further discussion around leadership targets at CBA and the Banks diversity policies. There was no further information available from the Bank about an approach to pay equity.

Ms. XXXXXX has since left the Australian arm of the Banking Group.

In respect to **ANZ**, then Director Campaign and Bargaining (Melbourne), Ms. XXXXXX and XXXXXX had 3 or 4 meetings with Ms. XXXXXX, then Executive Head of Advancement of Women and Diversity at ANZ Banking Group, in 2006-07. Again these meetings did not result in any firm commitments. ANZ agreed to sponsor keynote speaker, Ms. XXXXXX, for the Pay Equity Symposium in July 2006, but no further commitments were forthcoming. Ms. XXXXXX has since left ANZ.

In recent years, Ms. XXXXXX has again raised the issue of gender pay equity with Ms. XXXXXX, Group General Manager, Human Resources at ANZ. The response has been that ANZ are or can 'do that (themselves)'.

Finally, it may be of interest to the Committee that FSU was responsible for suggesting that the parties establish a Diversity Working Group as part of the Insurance Australia Group (IAG) 2004 enterprise agreement. This Group was established but in recent years IAG have rejected FSU involvement.

Though gender equality may be a priority for employers in our industry, FSU believes there is a gap between policy and practice. When it comes to pay equity, there is no willingness to work with the Union and if work is occurring within the enterprises, there is little transparency. Regulation is needed to ensure that there is continuous improvement in the area of gender equality and to work towards closing the gender pay gap.

4. Right to Request and the use of IFAs:

In Committee hearing on 18 April, Senator Cash asked Susan Kenna:

“what flexibilities have been negotiated through the individual flexibility agreements. In particular what I am interested in is why you say there will be greater flexibility achieved under this legislation that cannot be achieved under current legislation through individual flexibility agreements” [Proof Hansard, page 5].

FSU submits that the right to request flexible working arrangements must be a stand alone minimum standard and the use of this standard must be monitored via future reporting on gender equality to the Agency.

It is clear that employer and employee views of 'flexibility' are often at odds; with employers traditionally seeking trade-offs for flexibility in hours of work, against other conditions of work.⁷ Real flexibility to assist workers meet their caring and family responsibilities must be a minimum standard in Australian workplaces in 2012- a standard which all employers *must* meet. Flexibility to care for family or household members should not be able to be 'traded-off'.

The cultural and structural change which should be the goal of the new equality legislation cannot be achieved if employer oriented flexibility is pursued on an ad hoc basis. This will not change our workplaces over time. Under our current system via the *Fair Work Act*, the right to request forms part of an employee's contract as a minimum standard. Conversely, the use of Individual Flexibility Agreements could see employees opting out of contractual minimum standards.

Further, FSU is unaware of any current IFA which seeks to address right to request flexible working arrangements, though we are aware of IFAs which seek to *avoid* this NES entitlement (see below).

Recent FSU Submission to Fair Work Australia on the operation of IFAs reported that:

- No IFAs had been entered into in NAB, Westpac, Bankwest or Allianz Insurance;

⁷ See *Stretching Flexibility: enterprise bargaining, women workers and changes to working hours. Report of the Flexible Working Hours and Women Project*, Charlesworth, S, (HREOC) 1996.

- 30 IFAs had been entered into between **ANZ** and employees and
- 2,980 IFAs had been entered into between **CBA** and employees (up to 31 December 2011).⁸

The Submission notes that *“the factors influencing the making of IFAs in ANZ and CBA differ significantly”*.

It summarizes the very different motivations for the Banks’ use of IFAs, and in the case of CBA, the use of these as quasi individual contracts:

“In ANZ, all thirty IFAs were made in September 2009 at the initiative of employees upon the suggestion of the FSU to resolve issues associated with working patterns and the shift worker definition contained within the National Employment Standards (NES). The effect of the IFAs entered is to enable the additional week’s leave provided for in the NES to be taken as it accrues during each four weekly cycle. In turn, this has the effect of providing that an employee engaged to work 152 hours per four weekly cycle will be contracted and paid for those hours, while only being required to work 135 hours for each such cycle. Similarly, an employee engaged and paid to work 160 hours for each four weekly cycle will only be required to work 145 hours for that cycle.

The FSU is not aware of any disputes or disagreements concerning these IFAs in ANZ.

*IFAs within CBA appear to be driven **more by organisational priorities than by individual needs**. This contention is supported by the fact that, to the best of the FSU’s knowledge, IFAs in CBA:*

- *Are of the same format;*
- *Address the same clauses in the CBA Agreement; and*
- ***Do not address any additional matters raised by the individual employee in question.*** (emphasis added).

The Submission goes on to put the use of IFAs at CBA into some historical context. The Bank has until recently been reluctant to engage with FSU and has chosen to focus on individual arrangements with employees. This in our submission has the potential to undermine minimum workplace standards and reinforces the need for regulation.

“As to the factors influencing the making of IFAs in CBA, it is worth noting that CBA as an organisation has in recent years relied heavily on individual agreements as a basis for setting the terms and conditions of employment of employees. Prior to the making of the Commonwealth Bank Enterprise Agreement 2010, there had not been a collective agreement of any kind negotiated in relation to CBA employment since 2002. For example between October 2006 and June 2009, the FSU estimated that CBA had entered Australian Workplace Agreements with approximately 11,000 of its staff. In addition, the enterprise agreements preceding the 2010 Agreement, as well as the CBA Award, allowed the striking of individual agreements that operated on the terms of the award or agreement as relevant. While it is difficult to estimate how many such agreements CBA has entered into, the number would be in

⁸ *Submission to General Manager’s Report into the Operation of the first three years of the Fair Work Act 2009, Individual Flexibility Agreements, FSU, April 2012.*

thousands rather than hundreds. The use of IFAs in CBA continues this reliance on individual instruments.”(pg 6)

The FSU Submission notes that these IFAs are generally instigated at the request of the employer. The FSU National Industrial Officer responsible for CBA notes that where employees do ask to negotiate an IFA, they are presented with the CBA ‘template’ IFA which excludes employees from a range of conditions under the enterprise agreement, including:

- RDOs,
- overtime,
- annual leave loading,
- ordinary hours of work,
- meal breaks,
- voluntary weekend work,
- entitlement to a notional 2 day weekend,
- safe travel when finishing work late at night,
- all allowances

When employees seek to negotiate the terms of the IFA they are usually told that any derivation from the template can’t be processed using the current HR system (“Peoplesoft”). By removing most of the control that employees have over their hours of work, the IFAs may ***significantly reduce flexibility for employees.***

The FSU Submission on IFAs notes:

“there is no scrutiny of IFAs by anyone other than the parties making them...It is arguable that IFAs are similar in this sense to Australian Workplace Agreements (AWAs)”.(pg 5).

In answer to the Discussion Paper question 6:

Are IFAs establishing new workplace practices or formalizing existing practices?

the FSU Submission notes that the *“ANZ IFAs had the effect of formalising (and) preserving existing workplace practices. The CBA IFAs relate more to entitlements than they do to workplace practices as such, although it could be argued that they have the effect of formalising CBA’s previous workplace practice of offering individual agreements to employees.”(pg 11).*

The FSU National Industrial Officer for CBA, Mr. XXXXXX notes that he has seen IFAs which leave employees worse off than they would be under the enterprise agreement and IFAs which attempt to exclude employees from NES provisions under the *Fair Work Act* which are reflected in the agreement, including the right to request flexible working arrangements.

So at CBA, the most prolific user of IFAs, we submit that these are very *inflexible* documents which nevertheless seek to improve *employer* oriented flexibility in conditions of work. They provide no real chance for employees to have a say in flexible working arrangements.

It is our experience that industrial parties cannot rely on IFAs to introduce genuine flexible working arrangements which assist workers to meet their caring and family responsibilities.

FSU National Office
May 2012.