

---

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

---

© Commonwealth of Australia 2009

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.

Images courtesy of JupiterImages Unlimited.



# Contents

Foreword .....	x
Membership of the Committee .....	xvii
Terms of reference .....	xix
List of abbreviations .....	xx
List of recommendations .....	xxiv
<b>1 Introduction .....</b>	<b>1</b>
<b>Economic imperative .....</b>	<b>1</b>
Definition of pay equity .....	4
<b>Contributing factors to pay inequity .....</b>	<b>8</b>
<b>Benefits of pay equity .....</b>	<b>10</b>
<b>The pay equity inquiry .....</b>	<b>13</b>
Referral to the Committee .....	13
Conduct of the inquiry .....	13
<b>2 Setting the scene .....</b>	<b>17</b>
<b>The Australian scene .....</b>	<b>17</b>
Public sector .....	27
Trends in the gender pay gap .....	31
<b>Age trends .....</b>	<b>32</b>
<b>3 International perspective.....</b>	<b>61</b>
<b>The Australian scene .....</b>	<b>63</b>
International approaches to address pay inequity .....	67
New Zealand .....	70

---

Canada .....	73
<b>International obligations.....</b>	<b>77</b>
Reporting on international obligations .....	85
Federal Pay Equity Law – International Law .....	85
<b>4 Wages setting approaches.....</b>	<b>89</b>
Negotiation of wages.....	92
Union membership .....	99
Individual agreements .....	106
Collective bargaining.....	110
<b>5 Industrial relations legislative reforms .....</b>	<b>117</b>
<b>Amendments to <i>Fair Work Act 2009</i>.....</b>	<b>117</b>
Reform to <i>Fair Work Act 2009</i> .....	122
Coverage limited to ‘National System Employees’ .....	122
The concept of equal remuneration.....	125
Application of the equal remuneration principle.....	127
The meaning of ‘Remuneration’ .....	134
Equal remuneration provisions.....	139
Interaction of Fair Work Equal Remuneration Jurisdiction & State and Commonwealth Anti-Discrimination Law .....	142
Pay equity and modern awards.....	143
<b>Awards modernisation process.....</b>	<b>147</b>
<b>National Employment Standards .....</b>	<b>157</b>
<b>Minimum wages case .....</b>	<b>160</b>
<b>Enterprise agreements .....</b>	<b>162</b>
<b>Low paid stream.....</b>	<b>167</b>
<b>Achieving national consistency in pay equity law .....</b>	<b>187</b>
Australian federation - National pay equity law .....	188
Uniform laws .....	189
<b>6 Anti-discrimination legislation.....</b>	<b>193</b>
Intersection of anti-discrimination law and industrial relations: <i>Fair Work Act 2009</i> .....	193

Grounds of discrimination claims .....	195
Committee comments .....	207
<b>7 Pay Equity Unit .....</b>	<b>209</b>
Specialist Pay Equity Unit .....	211
<b>8 Administrative approaches .....</b>	<b>239</b>
Commonwealth procurement policy .....	239
Achieving pay equity through Commonwealth contracts .....	239
Industry assistance.....	244
Promoting pay equity through the federal grants power.....	245
Further measures.....	248
Office of Status of Women .....	260
APS departments and agencies.....	263
Code of Practice.....	266
<b>9 Data collection and research .....</b>	<b>269</b>
Current data.....	269
Equal Opportunity for Women in the Workplace Agency.....	270
Australian Bureau of Statistics .....	272
Household Income and Labour Dynamics in Australia .....	274
Workplace Industrial Relations Surveys.....	275
Women's Interdepartmental Committee.....	276
Australian Public Service surveys .....	277
Australian Public Service Commission .....	277
<b>Issues and deficiencies in data collection .....</b>	<b>278</b>
Women's employment status key indicators .....	278
Equal Opportunity for Women in the Workplace Agency.....	280
Australian Bureau of Statistics .....	282
Workplace Industrial Relations Surveys.....	285
Household Income and Labour Dynamics Australia.....	289
Women's Interdepartmental Committee.....	291
Pay Equity Unit – Research Function.....	292

---

<b>10 Women's choices?</b> .....	<b>299</b>
Workforce participation .....	299
Family friendly policies .....	301
Impact on women's life time earnings .....	302
Choice or compromise? .....	305
Part time positions.....	306
<b>Quality part time work</b> .....	<b>310</b>
<b>Flexible working arrangements</b> .....	<b>313</b>
Indigenous women .....	321
Statistics for Indigenous women.....	321
<b>Parental leave</b> .....	<b>329</b>
Day care and after school care .....	331
<b>Job security</b> .....	<b>339</b>
<b>Skills development and training</b> .....	<b>340</b>
Promotional opportunities .....	344
Attraction and retention .....	346
<b>11 Cultural dimensions</b> .....	<b>351</b>
Community cultural challenge .....	352
Women in Leadership .....	369
Changing the culture .....	373
<b>12 Conclusions</b> .....	<b>379</b>
<b>Appendix A – List of submissions</b> .....	<b>385</b>
<b>Appendix B – List of exhibits</b> .....	<b>393</b>
<b>Appendix C - List of hearings and witnesses</b> .....	<b>409</b>
<b>Appendix D - Glossary</b> .....	<b>421</b>

<b>Minority Report</b> .....	<b>423</b>
<b>Introduction and Summary of Coalition Members' Position</b> .....	<b>423</b>
Evidence provided to the Committee .....	424
Fair Work Act 2009 .....	425
Maternity Leave.....	428
Government must take the lead .....	429
More information required .....	430
Conclusion .....	431

## LIST OF TABLES

Table 2.1	Female representation in state, territory and federal parliaments in Australia ....	27
Table 2.2	Labour force participation rates for women aged 15 years and above by highest level of educational attainment, 2006 .....	37
Table 2.3	Gender pay gap by industry, full time adult ordinary time weekly earnings, Australia, November 2008. ....	48
Table 2.4	Gender pay gap (non-managerial adults) by occupation - hourly ordinary time rates of pay and proportions of employees (May 2006).....	51
Table 2.5	Female employment density by industry, Australia, February 2009 .....	58
Table 3.1	Gender Gap Index (Australia).....	64
Table 3.2	Gender Gap Subindexes – Economic Participation and Opportunity (Australia)	65
Table 3.3	Gender Gap Subindexes – Political Empowerment (Australia).....	65
Table 3.4	Gender Gap Subindexes – Educational Attainment (Australia) .....	65
Table 3.5	Provisions of the Quebec Pay Equity Act .....	77
Table 4.1	Form of Agreement and Average Hourly Cash Earnings (A\$).....	93
Table 4.2	Gender wage gap for non-managerial adults by method of setting pay. Hourly ordinary time rates of pay, May 2006.....	93
Table 4.3	Methods of setting pay, average weekly total cash earnings, Australia, May 2006 .....	96
Table 4.4	Award reliant industries, Australia 2006 .....	104
Table 4.5	Methods of setting pay, adult non-managerial employees, (May 2006), Community services industry.....	113
Table 8.1	Salary Sacrifice (2006) EEH.....	251

Table 10.1	Australian labour force by gender breakdown, April 2009 .....	307
Table 10.2	Characteristic of employment excluding owner managers .....	308
Table 10.3	Key Employment Statistics for Tourism NT .....	331
Table 11.1	A comparison of wages of males and females across their lifetime.....	353
Table 11.2	EOWA Australian Census of Women in Leadership 2008.....	370

## LIST OF FIGURES

Figure 2.1	Gender pay gap using AWE total earnings - weekly and hourly .....	18
Figure 2.2	Gender pay equity ratios 1967 – 2006 (Hourly Rates, Total earnings) .....	19
Figure 2.3	Gender wage gap over time: Female earnings as a proportion of male weekly earnings.....	20
Figure 2.4	Wage relativity across the distribution (EEH Full-time non-managerial 2006) ....	21
Figure 2.5	Gender differences in workforce composition - participation levels of females at job levels.....	24
Figure 2.6	Average female earnings relative to male earnings by job level. ....	25
Figure 2.7	Annual Average Weekly Ordinary Time Earnings Gender Wage Ratio (in full time employment) by state and territories, 1992 -2007 (%).....	26
Figure 2.8	Female earnings as a proportion of male (Full time Adult Ordinary Time Earnings) Trends by state an territory.....	26
Figure 2.9	Distribution of women's earnings by full and part-time employment Status, August 2008 .....	31
Figure 2.10	Labour force participation rate by gender and age, March 2009 .....	33
Figure 2.11	Age (2007 EEBTUM) Full time earnings in main job .....	34
Figure 2.12	Median annual starting salaries for Bachelor graduates by selected fields of study and gender 2008 .....	38
Figure 2.13	.....Average full time salary of VET graduates 6 months after completing their training .....	42
Figure 2.14	Earnings gap private sector Hilda Hourly Rate – Relative to male with no dependent children Quantile Regression.....	44
Figure 2.15	Participation rates of males and females within job families .....	49
Figure 2.16	Gender pay differences - The extent to which females earn less than their male counterparts in various job families.....	52



Figure 2.17	Gender earnings by industry, gender earnings relativity and degree of feminisation of workforce, November 2007 Average Weekly Earnings Full time adult ordinary time earnings .....	53
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).....	54
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).....	55
Figure 2.20	Employee Earnings, Benefits and Trade Union Membership Survey based on industry (Full Time adult earnings).....	56
Figure 2.21	Employee Earnings, Benefits and Trade Union Membership Survey (Full Time adult earnings) based on occupation.....	57
Figure 3.1	Gender wage gap (Around 2003-04) .....	66
Figure 3.2	International comparison of gender wage gaps.....	66
Figure 4.1	Method of pay setting, weekly total cash earnings – distribution of female full time non managerial adult employees August 2008.....	94
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.....	95
Figure 4.3	Wage setting arrangements – female, August 2008.....	112
Figure 4.4	Wage setting arrangements – male, August 2008.....	112
Figure 5.1	Health and community services , relative, original and real wages from 2003 to 2007 .....	179
Figure 5.2	Trend in wage relativities (Average Weekly Earnings Full time Adult Employees180	
Figure 9.1	Female earnings as a proportion of male earnings.....	294
Figure 10.1	Life time earnings profile of women with completed secondary education, by number of children.....	303
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 children .....	304



## 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

Mr Andrew Laming MP (until 10/11/08)

Mr Mike Symon MP

## Committee Secretariat

Secretary	Dr Glenn Worthington
	Ms Joanne Towner
Inquiry Secretary	Ms Cheryl Scarlett
	Ms Jane Hearn
Senior Research Officer	Mr Raymond Knight
Office Manager	Mr Daniel Miletic
Administrative Officers	Ms Ozge Kosemehmetoglu
	Ms Emma Martin
	Ms Kane Moir



## 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.