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**Inquiry into pay equity and associated issues related
to increasing female participation in the workforce**

**Submission by the Office for Women,
Department of Families, Housing, Community Services and
Indigenous Affairs
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INQUIRY INTO PAY EQUITY AND ASSOCIATED ISSUES RELATED TO INCREASING FEMALE PARTICIPATION IN THE WORKFORCE

Many gains have been made towards women's economic security and engagement but many challenges remain. The Office for Women in the Department of Families, Housing, Community Services and Indigenous Affairs, welcomes the opportunity to contribute to this inquiry into pay equity and associated issues related to increasing women's participation in the workforce.

In making this submission to the House Standing Committee on Employment and Workplace Relations, the Office for Women abides by the Government guidelines for official witnesses before Parliamentary committees and related matters and, accordingly, refrains from advocating, defending or canvassing the merits of government policies (including policies of previous Commonwealth governments, or State or foreign governments), or from promoting a particular policy viewpoint.

Part 1 of this submission provides background to the pay equity discussion including consideration of evidence in relation to pay inequity. Part 2 reports the feedback of two gender pay equity roundtables organised by the Office for Women on 30 April and 30 July 2008.

PART 1: BACKGROUND AND FACTORS CONTRIBUTING TO PAY INEQUITY

Introduction

The status of women has improved significantly over the last several decades. Women's increased labour force participation has been a major change leading to better economic security for women.

In 1985, women's labour force participation rate was around 45 per cent; in 2008 the rate stands at 58 per cent.¹

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; and
- the possibility of reliably controlling fertility via oral contraception.²

¹ Australian Bureau of Statistics, *Labour Force Australia, June 2008*, cat. no. 6202.0, ABS, Canberra, 2008.

² I Fraser, 'Forty years of combined oral contraception: the evolution of a revolution', *Medical Journal of Australia*, 2000, p. 173 & pp. 541-544.

There are still, however, a number of areas in life where women remain disadvantaged. A primary symptom and consequence of these remaining challenges is pay inequity between women and men. Women continue to be remunerated less well than men for comparable work. Pay equity is central to achieving gender equality.

The Government is well aware of the problem of gendered pay inequity. (See below for discussion of the gender pay gap). The Government has noted that while being aware that instituting complete pay equity will be a significant challenge, it is committed to reducing and ultimately eliminating the earnings gap between male and female workers.³

The Gender Pay Gap

The gender pay gap (a measure which highlights overall pay inequity) is measured in terms of a ratio, which converts average female earnings into a proportion of average male earnings to calculate the gender pay gap. There are a number of different ways to measure this gap. In Australia in May 2008, the average total weekly earnings for *all* employees were \$702.30 for women and \$1,075.10 for men. These estimates produce a ratio of female to male earnings of 65.3 per cent, which equates to a gender pay gap of 34.7 per cent. This reflects the fact that women work part-time more than men, with 45.5 per cent of women and only 14.5 per cent of men working part-time in May 2008.⁴

When only full-time employees are considered, the ratio increases to 80.5 per cent. Men are more likely to be paid overtime than women, so excluding overtime hours and measuring *ordinary time earnings*, (ordinary time earnings refers to one week's earnings of employees for the reference period attributable to award, standard or agreed hours of work) increases the ratio of female to male earnings to 83.8 per cent (as at May 2008).

Another measure of the wages gap uses hourly rates. The Australian Bureau of Statistics (ABS) Survey Employee Earnings and Hours (EEH) provides data by a number of employee characteristics including full-time, part-time and casual status, and wage setting arrangements. As it specifically measures hourly rates it is often considered a more accurate measure of women's earnings. However, the EEH provides estimates for non-managerial employees only, and is conducted bi-annually. In 2006, the EEH found a ratio of 90 per cent of female to male earnings.⁵

The generally used measure for the gender pay gap is the ratio between women and men's *average weekly ordinary time earnings* among full-time employees. Using this measure, Figure 1 shows that over the last 25 years, there has been a trend towards a slightly lower gender earnings gap, although this has been very gradual and some reversals have been evident at times. However, in the last 25 years, women's average weekly wages have not equalled men's – since 1984, women employed full-time, on average, have earned only between 81 cents and 85 cents for every dollar full-time male employees earned.⁶

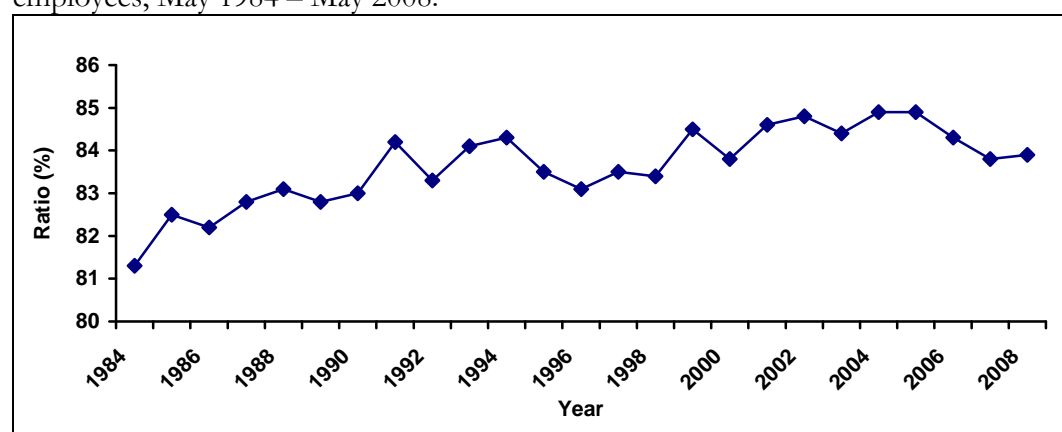
³ T Pilbersek, (Minister for the Status of Women) *Australian Women Short Changed*, media release, Parliament House, Canberra, 25 January 2008.

⁴ Australian Bureau of Statistics, *Labour Force Australia, August 2008*, cat. no. 6202.0, ABS, Canberra, 2008, p. 6.

⁵ Australian Bureau of Statistics, *Employee Earnings and Hours, Australia, May 2006*, cat. no. 6306.0, ABS, Canberra, 2006, p. 5.

⁶ Australian Bureau of Statistics, *Average Weekly Earnings, Australia, February 2008*, cat no. 6302.0, ABS, Canberra, 2008.

Trends in female/male average weekly ordinary time earnings among full-time employees, May 1984 – May 2008.



⁷ *Average Weekly Earnings, Australia (Dollars) – Trend Series, ABS.*

Women’s pay equity over time

Women’s advancement towards pay equity has been linked with socio-economic and regulatory changes that have taken place over the last century. The first large scale moves towards pay equity took place during the second world war.⁸

When labour shortages began to occur during the course of the war, some female workers who were employed in traditional male jobs were awarded a much improved rate of pay between 60 per cent and 100 per cent of the male wage, depending on the industry and its importance to the war effort. After the end of the war in 1945, women were returned to lower pre-war pay scales of between 54 per cent and 60 per cent of the male rate. Such developments during and after the war led more women to demand equal pay for equal work.⁹

In 1951 the International Labour Organisation developed a convention on Equal Remuneration (ILO Convention 100). This recommended equal remuneration for men and women workers *for work of equal value*.

Despite this, in Australia until 1969, legislation allowed employers to pay women a minimum rate of pay that was 25 per cent less than male employees doing the same or similar work.¹⁰

In 1969 the first federal pay case (*Equal Pay Case 1969 - (1969) 127 CAR 1142*) established the principle of *equal pay for equal work*. The 1969 case established an important first principle that affected 18 per cent of women workers, mostly teachers and nurses.¹¹

⁷ Australian Bureau of Statistics, *Average Weekly Earnings, Australia*, (various) cat no. 6302.0, ABS, Canberra.

⁸ Department of Foreign Affairs and Trade, *About Australia: Women – Towards Equality*, <http://www.dfat.gov.au/facts/women.html>

⁹ The University of Queensland, The Fryer Library, *The Struggle for Equal Pay*, http://www.library.uq.edu.au/fryer/worth_fighting/7.html

¹⁰ The University of Queensland, The Fryer Library, *The Struggle for Equal Pay*, http://www.library.uq.edu.au/fryer/worth_fighting/7.html

¹¹ B Finlayson, ‘Equal Pay – We’ve Come A long Way’, *Workers Online*, Issue No 17, 11 June 1999, http://workers.labor.net.au/17/d_review_women.html

In 1972, the second federal equal pay case¹² widened the 1969 principle to *equal pay for work of equal value* in line with ILO 100.¹³ This meant that women were awarded the same rate of pay as men - no matter what work they were doing, as long as it was assessed as comparable in value¹⁴ This was extended through all awards from 1972 and eventually put an end to separate male and female rates in awards. The gender gap was reduced by 19 per cent between 1972 and 1977.¹⁵

There has not been a comprehensive federal response to pay equity since. (State and federal legislation is discussed further in this report).

While the nation-wide gender pay gap is currently 16.2 per cent, (as at May 2008) ratios can differ from State to State. In May 2008, the gender pay gap in Western Australia was 28 per cent.¹⁶

Recent research notes that Western Australia shows a marked decline in the ratio of female to male earnings across two periods 1992-93 and again in 2002. Between these points there was a slight recovery in the ratio of women's earnings relative to men. However, the ratio of female to male earnings observed in 2002 still impacts on men and women's pay rates.¹⁷ As shown in the following table, the gender pay gap was narrowest in Tasmania.

Average Weekly Ordinary Time Earnings for Males and Females – May 2008

	Males	Females	
NSW	1218.1	1034.4	84.9%
VIC	1166	1008	86.4%
Qld	1124.4	969.9	86.3%
SA	1111.4	937.2	84.3%
WA	1398.5	1014.1	72.5%
Tas	1053	952.8	90.5%
NT	1176.8	985.4	83.7%
ACT	1412.3	1214.3	86.0%

¹⁸ *Average Weekly Earnings, May 2008*, ABS.

¹² *National Wage and Equal Pay Case 1972 - (1972)* 147 CAR 172

¹³ Public Service Association New South Wales, *Pay Equity*, <http://psa.labor.net.au/women/equity.html>

¹⁴ Australian Council of Trade Unions, ACTU Worksite, *Equal Pay*, http://www.worksite.actu.asn.au/showall.php3?page=article&artid=38&secid=3&workst_Session=cfa763e8259c3420e642f018a7d735f3

¹⁵ B Finlayson, 'Equal Pay – We've Come A long Way', *Workers Online*, Issue No 17, 11 June 1999, http://workers.labor.net.au/17/d_review_women.html

¹⁶ Australian Bureau of Statistics, *Average Weekly Earnings, Australia, February 2008*, cat no. 6302.0, ABS, Canberra, 2008

¹⁷ ; R Bray, 'Gender earnings differentials in Australia: A statistical overview of women's earnings', Department of Families, Housing, Community Services and Indigenous Affairs, unpublished report, 2008;

¹⁸ Australian Bureau of Statistics, *Average Weekly Earnings, Australia, February 2008*, cat no. 6302.0, ABS, Canberra, 2008.

The factors that contribute to gender pay inequity

There are many reasons why women's pay overall still falls below that of men's. Some of these factors are examined in this section.

Women's responsibility for unpaid caring and work

It is generally acknowledged that a key reason for the gender pay gap is that women are generally primary carers for young children and dependent adults. Women also continue to bear the major responsibility for unpaid domestic work.¹⁹ This means that women bear a double burden, work and caring, that impedes their workforce engagement.

Data from the Australian Bureau of Statistics, *How Australians Use Their Time, 2006*, shows the differences in time use on a daily basis for men and women.

Table 1: Time use comparisons for men and women, 2006, selected activities

Activity	Men	Women
Employment related	4 hours 33 minutes	2 hours 21 minutes
Food and drink preparation/clean up	29 minutes	1 hour 9 minutes
Laundry and clothes care	5 minutes	29 minutes
Other housework	10 minutes	33 minutes
Child care	22 minutes	59 minutes
Purchasing goods and services	38 minutes	58 minutes
Recreation and leisure	4 hours 19 minutes	3 hours 57 minutes

²⁰*How Australians Use Their Time, 2006*, ABS.

This ABS Time Use Survey found that men's time spent in caring for children has increased slightly since 1997. In 2006 men spent, on average, 22 minutes a day on child care activities, up from 16 minutes in 1997²¹. However, women still undertake the majority of the child care work in families and the average time spent on this unpaid work has increased. In 2006 women spent 59 minutes a day, on average, on child care activities, up from 45 minutes in 1997.²²

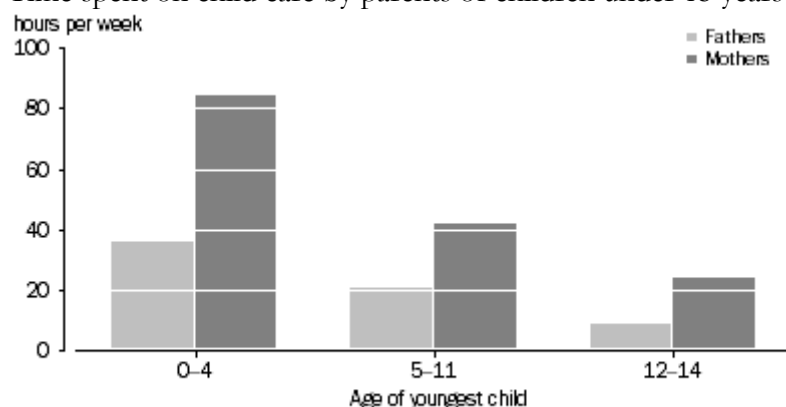
¹⁹ Human Rights and Equal Opportunity Commission, *It's about time. Women, men, work and family*, HREOC, Sydney, 2008.

²⁰ Australian Bureau of Statistics, *How Australians Use Their Time, 2006*, cat. no. 4153.0, ABS, Canberra, 2007.

²¹ Note that these child care numbers are for all men and all women – not just those with children.

²² Australian Bureau of Statistics, *How Australians Use Their Time, 2006*, cat. no. 4153.0, ABS, Canberra, 2007.

Time spent on child care by parents of children under 15 years



Includes primary and secondary activities

²³ *How Australians Use Their Time, 2006*, ABS.

Note: Secondary activities are those which occur in conjunction with other activities, for example, child minding while cooking.

In 2006, whether parents were employed or not, mothers spent much more time caring for children than fathers. The pattern of mothers spending more time than fathers on child care activities was reflected across the age spectrum of the children. For both mothers and fathers, the time spent on caring activities decreased significantly as the age of the youngest child increased ²⁴

Women also provide the majority of care for people with a disability (including partners or young and adult children) and the elderly in families. The latest available ABS *Survey of Disability, Ageing and Carers* (SDAC) found that in 2003:

- There were 2.6 million carers who provided some assistance to others who need help because of disability or age. Over half (54 per cent) of all carers were women;
- Primary carers provide the majority of help for a person with a disability and usually live in the same household. The majority of primary carers are female (71 per cent), although the difference between the sexes is less pronounced for those aged 65 years and over (58 per cent female);
- The rise in the number of older male primary carers is because of spousal care; and
- Primary carers have a lower labour force participation rate (39 per cent) than people who are not carers (68 per cent).

Department of Families, Housing, Community Services and Indigenous Affairs unpublished analysis of SDAC data shows that most aged care in Australia, like child care, is informal, unpaid and takes place within families. It is undertaken by the adult children of the elderly, mainly women, and also by spouses. The work participation of carers is less affected by elder care than it is by child care responsibilities.²⁵

²³ Australian Bureau of Statistics, *How Australians Use Their Time, 2006*, cat. no. 4153.0, ABS, Canberra, 2007.

²⁴ Australian Bureau of Statistics, *How Australians Use Their Time, 2006*, cat. no. 4153.0, ABS, Canberra, 2007.

²⁵ Australian Bureau of Statistics, *Disability, Ageing and Carers: Summary of Findings, Australia, 2003*, cat. no. 4430.0

The Human Rights and Equal Opportunity Commission (HREOC) report *It's About Time: Women, Men, Work and Family* (2007) found that increased paid work opportunities for women in the past 20 years have not produced a corresponding change in the division of unpaid responsibilities between men and women. Women with family and carer responsibilities carry a disproportionate share of unpaid work, including child care, elder care and associated housework, while men in full-time paid work lack access to family life. For both men and women the imbalance of paid work and family and carer responsibilities has a direct impact on their life outcomes, including their social and economic status, participation in public life, health and emotional wellbeing.²⁶

The recent Listening Tour undertaken by Sex Discrimination Commissioner, Elizabeth Broderick, reinforced the findings of the *It's About Time* report. Discussions engaged in as part of the Tour found that attitudes about the role of women as carers, as well as financial factors, continue to influence everyday decisions about men's and women's division of labour. The Tour also found that there remains an expectation that women will take responsibility for most of the unpaid work. Some men said they wanted to take on a greater share of caring responsibilities but felt impeded by their workplace culture and social norms.²⁷

There are economic consequences for women, and for government pensions outlays, from women shouldering the greater responsibility for unpaid and caring work. As many women work part-time, or take time out from the labour force due to caring responsibilities, this impacts overall on their capacity to accrue superannuation and other forms of savings.

Recent research commissioned by the Office for Women, *Women's Experiences of Paid Work and Planning for Retirement* released in August 2008, found that many mature Australian women (aged between 53 and 58 years in the research) are uncertain about when they might retire due to a lack of confidence in their financial future.

The report also found that:

- almost a third of mature age women surveyed are working longer hours than they reported in 1996;
- approximately one quarter of women surveyed were providing care or assistance to someone due to long-term illness, disability or frailty - these women were less likely to be consistently in the workforce; and
- women's poorer attachment to the labour force in their younger years results in disadvantage in regard to retirement income, particularly for those who are separated and divorced.²⁸

In addition, as noted by the Office for Women commissioned research report *Aspects of Retirement*:

“Women receive less [superannuation] because contributions are usually based on a percentage of total salary and, on average, men's earnings are higher than women's and more women than men work in low-paying occupations ... Even when women re-enter the workforce later in life, their superannuation

²⁶ Australian Bureau of Statistics, *How Australians Use Their Time, 2006*, cat. no. 4153.0, ABS, Canberra, 2007.

²⁷ Human Rights and Equal Opportunity Commission 2008, *Gender equality: What matters to Australian women and men: The Listening Tour Community Report*, HREOC, Sydney, 2008.

²⁸ P Warner-Smith, J Powers & M Hampson, *Women's Experiences of Paid Work and Planning for Retirement*, The Australian Longitudinal Survey of Women's Health, University of Newcastle & University of Queensland, ACT, 2008.

contributions accumulate far less interest than people who have had an unbroken career path.”²⁹

In 2006, men accumulated average superannuation account balances of \$69,050 while women accumulated an average of \$35,520. Average retirement payouts in 2005-06 were \$136,000 for men and only \$63,000 for women.

Moreover, in 2006 one in eight women (12.3 per cent) had no superannuation at all.³⁰ It is clear that most recent female retirees will need to substantially rely on the Age Pension in their retirement.

More women work part-time in a long hours culture

Women frequently seek work that allows them time to accommodate their unpaid and caring responsibilities. Part-time and casual employment is a particular feature of Australian women's involvement in the workforce. Increased workforce flexibility has supported an increase in part-time and casual work, which is dominated by women.

Both supply-side and demand-side factors have driven the growth in part-time employment. A key supply-side factor includes the entry into the workforce of people combining employment and other activities such as education and raising a family. An important demand-side factor is employers using part-time employment to increase operational flexibility.³¹

In 1985, 20 per cent of Australian women aged 15-64 worked part-time and by 2005, two in every five (41 per cent) of women worked part-time.³² This rate was well above the OECD average of 26 per cent for that year.³³

In August 2008, 4,847,700 women (or 58 per cent of all women) were in employment; and of these:

- 55 per cent worked full-time; and
- 45 per cent worked part-time.

By contrast, of the 5,897,300 number of men in employment:

- 86 per cent worked full-time; and
- 14 per cent worked part-time.³⁴

As many Australian women are typically involved in juggling work and caring responsibilities, they will often gravitate towards jobs which offer shorter or flexible hours. Jobs of this type are more common in some industries and occupations than others.

²⁹D Warren, *Aspects of Retirement for Older Women*, Melbourne Institute of Applied Economic and Social Research, Melbourne, 2006, p. 40.

³⁰R Clare, *Retirement Savings Update – February 2008*, Association of Superannuation Funds of Australia, ASFA Research and Resource Centre, Sydney, 2008.

³¹The Productivity Commission, *Part-Time Employment – The Australian Experience*, Productivity Commission, Melbourne, 2008, p. xvi.

³²Australian Bureau of Statistics, *Employee Earnings and Hours, Australia, May 2006*, cat. no. 6306.0, ABS, Canberra, 2006.

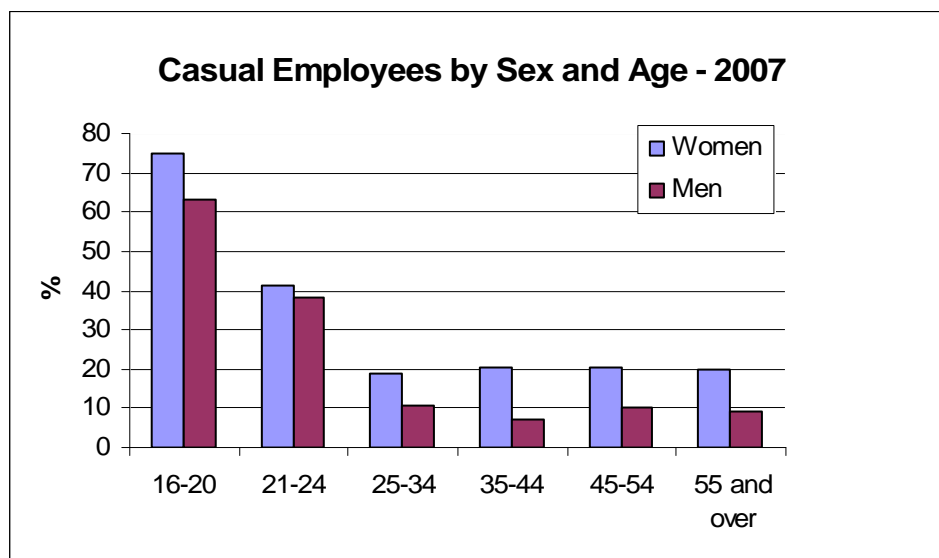
³³Australian Bureau of Statistics, *Employee Earnings and Hours, Australia, May 2006*, cat. no. 6306.0, ABS, Canberra, 2006, p. 5.

³⁴Australian Bureau of Statistics, *Labour Force Australia, August 2008*, cat .no. 6202.0, ABS, Canberra, 2008.

In August 2007, of the 1,929,000 women who worked part-time, 21 per cent worked in health care and social assistance, 20 per cent worked in retail trade and 11 per cent worked in accommodation and food services, respectively.³⁵

Australia has one of the highest rates of casual employment in OECD countries, following only behind Spain which has a long tradition of employment in the informal sector.³⁶

In Australia, casual employment is the only employment arrangement where women outnumber men. As with part-time employment, the shorter hours that are a feature of many casual jobs allow women to incorporate work with their caring and other unpaid responsibilities.



³⁷Forms of Employment, 2007, ABS.

Part-time and casual jobs often suit workers, particularly women, with primary caring responsibilities.³⁸ However, most casual employment does not offer entitlements taken for granted in other forms of employment, such as sick, holiday or bereavement leave. In addition, the unpredictable hours that are common to casual employment³⁹ can limit access to credit and make it difficult to arrange child care, especially when most child care centres required booked places to be paid for even when not used.⁴⁰

³⁵ Australian Bureau of Statistics, *Employment, Earnings, Benefits and Trade Union Membership, Australia, 2007*, cat. no. 6310.0, Canberra, 2007.

³⁶ B Pocock, J Buchanan, & I Campbell, *Securing Quality Employment: Policy Options for Casual and Part-time Workers in Australia*, Chifley Research Centre, ACT, 2004.

³⁷ Australian Bureau of Statistics, *Forms of Employment, Australia, 2007*, cat. no. 6359.0, ABS, 2007.

³⁸ B Pocock, J Buchanan & I Campbell, *Securing Quality Employment: Policy Options for Casual and Part-time Workers in Australia*, Chifley Research Centre, ACT, 2004, p. 6.

³⁹ B Pocock, J Buchanan & I Campbell, *Securing Quality Employment: Policy Options for Casual and Part-time Workers in Australia*, Chifley Research Centre, ACT, 2004, p. 15.

⁴⁰ B Pocock, J Buchanan & I Campbell, *Securing Quality Employment: Policy Options for Casual and Part-time Workers in Australia*, Chifley Research Centre, ACT, 2004, p. 15.

⁴⁰ B Pocock, J Buchanan & I Campbell, *Securing Quality Employment: Policy Options for Casual and Part-time Workers in Australia*, Chifley Research Centre, ACT, 2004, pp. 10 & 15.

⁴¹ Australian Bureau of Statistics, *Longer Working Hours, Australian Social Trends, 2003*, cat. no. 4102.0, ABS, 2003 pp. 119-123.

Women's concentration in part-time and casual employment has pay equity implications including:

- Lower access to training and more limited opportunities for promotion and career development than full-time employees; and
- Lower levels of unionisation and participation in union structures than full-time employees.⁴¹

Concurrently, with increased part-time work, particularly for women, working hours for full-time workers has increased significantly.

Between 1982 and 1994, average hours worked by full-time workers increased from 42 to 45 hours per week. This trend levelled off during the late 1990s, and since 2000, average hours worked by full-time workers have dropped back to around 44 hours per week (45 hours for men and 41 hours for women).⁴²

Over the same period, the distribution of full-time hours changed considerably. Between 1982 and 2002, the proportion of full-time workers working a 40 hour week declined from 39 per cent to 24 per cent. While this was accompanied by a slight increase in the proportion of full-time workers working less than 40 hours per week, most of the shift was towards longer working hours. The greatest increase was in the proportion of full-time workers working 50-59 hours per week (from 10 per cent to 16 per cent). This trend towards longer working hours was relatively uncommon among other OECD countries, most of which either experienced little change, or continued the longer term trend in reducing full-time working hours.⁴³

Very long working hours are also more prevalent in some occupations than others, and this is associated with a range of factors, many of which are closely interrelated. For example, very long working hours tend to be more common in occupations characterised by relatively high levels of self-employment in small business or private practice. Among employees, very long working hours are most common in occupations involving high levels of personal responsibility and accountability, relatively high earnings and in jobs with no standard working hours. Very long working hours tend to be less prevalent in predominantly female occupations and in occupation groups with more highly regulated working hours and conditions.⁴⁴

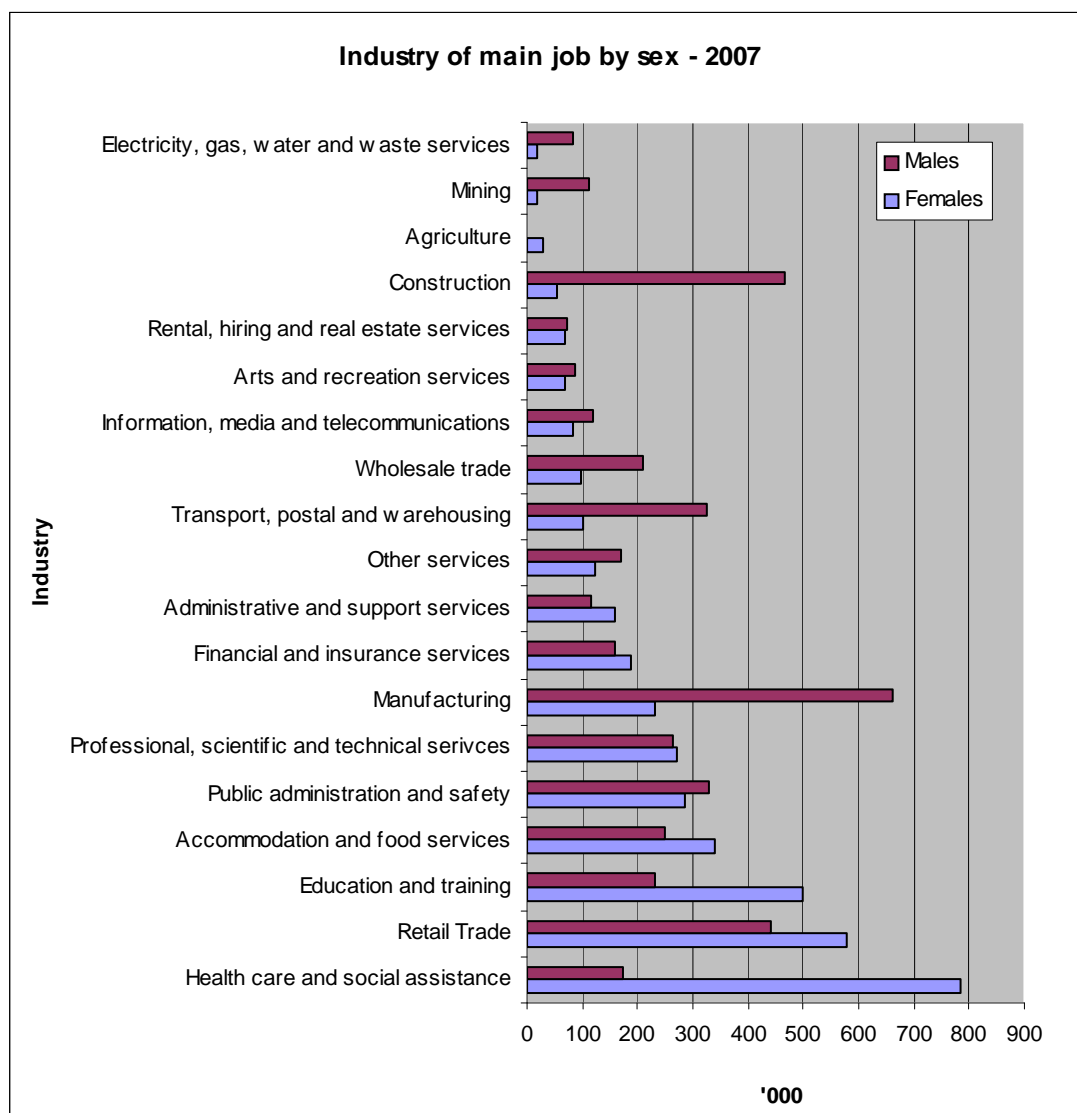
Occupation and industry segregation and undervaluation of women's work

Women and men are segregated in the labour market, with the majority of women, engaging in a narrow range of occupations traditionally considered suitable for women, for example - nurse, teacher, child care worker.

The graph below shows that the industries with the highest numbers of women in 2007 were the health care and social assistance, retail trade and education and training industries, respectively.

⁴³ Australian Bureau of Statistics, Longer Working Hours, *Australian Social Trends, 2003*, cat. no. 4102.0, ABS, 2003 pp. 119-123.

⁴⁴ Australian Bureau of Statistics, Longer Working Hours, *Australian Social Trends, 2003*, cat. no. 4102.0, ABS, 2003 pp. 119-123.



⁴⁵ *Employee Earnings, Benefits and Trade Union Membership, 2007*, ABS.

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.⁴⁶

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 some cases have tended to assign more worth to features that are characteristic of work performed predominantly by men.⁴⁷

⁴⁵ Australian Bureau of Statistics, *Employee Earnings, Benefits and Trade Union Membership, Australia 2007*, cat. no. 6310.0, ABS, 2007.

⁴⁶ Equal Employment Opportunity for Women in the Workplace, *Occupational Segregation*, James Cook University, http://www.jcu.edu.au/eo/women/JCUDEV_012168.html.

⁴⁷ Department of Commerce, Office of Industrial Relations, NSW, *Work and Family*. <http://www.workandfamily.nsw.gov.au/payequity/gap.html>

This undervaluation of women's work will continue unless steps are taken to revalue these occupations.

In 2002, in a landmark case, the work of librarians was found by the Full Bench of the New South Wales Industrial Relations Commission to have been undervalued. Using Equal Remuneration Principles the work of librarians was compared to that of geologists – a profession which requires a similar entry level qualification.⁴⁸

In handing down its findings, the Full Bench of the New South Wales Industrial Relations Commission fully-ratified the *Crown Employees [Librarians, Library Assistants, Library Technicians and Archivists] Award 2002*, which incorporated pay increases of up to 26 per cent. The new award also adopted firm qualification standards and detailed classification descriptors.

In dealing with undervaluation, New Zealand has developed guidelines, methodologies and tools to enable public and private sector organisations to implement pay and employment equity reviews and to carry out gender-neutral job evaluations – or pay equity audits.⁴⁹

The New Zealand Pay and Employment Equity Plan of Action was launched in 2004. The aim of the Plan is to ensure that:

- remuneration is free of gender bias; and
- barriers to employment equity for women are removed.

The main activities in the Plan are organisation and sector reviews of pay and employment equity, and investigations of pay in female dominated occupations (70 per cent or more female dominated) in and across organisations and sectors.

The Plan of Action sits in the context of the New Zealand *Employment Relations Act*, which provides the framework for collective bargaining and the rights and responsibilities of employers and unions, including requirements to deal with each other in good faith, and for public sector employers to be “good employers” and implement equal employment opportunity programs.⁵⁰

Twelve agencies in the New Zealand Public Service agreed to undertake pay and employment equity reviews in 2005-06. Discussions with agencies to conduct audits in 2007-08 are continuing with 32 tertiary education institutions, 32 kindergarten associations, 91 crown entities, and 86 local government authorities agreeing to join the program.⁵¹

⁴⁸ *Crown Librarians, Library Officers and Archivists Award Proceedings*,
<http://www.lawlink.nsw.gov.au/ircjudgments/2002nswirc.nsf/2002nswirc.nsf/WebView2/25A3DB544012270DCA256B8700056D22?OpenDocument>

⁴⁹ The New Zealand Public Service Association, *Pay and Employment Equity*,
<http://www.psa.org.nz/home.aspx>.

⁵⁰ Department of Labour, *New Zealand's Pay and Employment Equity Story*, Resources,
<http://www.dol.govt.nz/services/PayAndEmploymentEquity/resources/pay-equity-2007/index.asp>.

⁵¹ Department of Labour, *Pay and Employment Equity Unit*,
<http://www.dol.govt.nz/services/PayAndEmploymentEquity/news/newsletters/july05.asp>

The program involves:

- development of a pay and employment equity review tool;
- training and advising on the review process and the review tool;
- supporting agencies to implement pay and equity reviews;
- setting up processes for undertaking pay investigations and managing pay settlements;
- developing a Gender Inclusive Job Evaluation Standard.

As part of the review process, organisations need to:

- identify where men and women have different experiences in regards to three defined equity indicators;
- investigate if these differences can be explained and justified;
- prioritise inequities which need to be addressed; and
- develop a response plan to address those inequities.

The New Zealand pay and employment equity reviews are based on the premise that women and men should have equitable opportunities at work to access rewards, to participate and to be treated with respect and fairness.⁵²

Women have less access to overtime and over-award payments

Women workers receive a significantly lower level of discretionary payments, particularly over-award and bonus payments, than do men. Such payments may also include profit sharing, service increments and commissions. This is largely because women tend to be concentrated in jobs with less access to a range of over-award payments and bonuses and in industries where over-award payments are not traditionally offered.

Women who do work overtime are less likely than men to be paid for it. One-third of full-time employees who regularly worked overtime in 2000 reported that they had not been paid for their most recent period of overtime work. Women were more likely than men to work unpaid overtime. Among full-time employees who regularly worked overtime in 2000, 45 per cent of females had not been paid for their most recent period of overtime, compared with 28 per cent of males.⁵³

The prevalence of unpaid overtime varied across occupation and industry groups. In 2000, 49 per cent of full-time professional employees who regularly worked overtime were not paid for their most recent period of overtime. Unpaid overtime was also relatively common among full-time advanced clerical and service workers (44 per cent of full-time employees), managers and administrators (42 per cent) and associate professionals (41 per cent). By far the highest rates of unpaid overtime (and overtime in general) were found in education. In 2000, 62 per cent of full-time employees in the education sector worked overtime on a regular basis. Two-thirds of these employees had not been paid for their most recent period of overtime.⁵⁴ As noted in the data on industry of main job in this submission, women are highly represented in the education and training industry.

⁵² Department of Labour, *Pay and Employment Equity Unit*, <http://www.dol.govt.nz/services/PayAndEmploymentEquity/news/newsletters/july05.asp>.

⁵³ Australian Bureau of Statistics, Longer Working Hours, *Australian Social Trends, 2003*, cat. no. 4102.0, ABS, 2003, pp. 119-123.

⁵⁴ Australian Bureau of Statistics, Longer Working Hours, *Australian Social Trends, 2003*, cat. no. 4102.0, ABS, 2003, pp. 119-123.

Wage setting arrangements can also affect women's pay equity. As the following table illustrates, the gender pay gap tends to be lower in industries and occupations covered by awards and collective agreements.

Full-time average weekly total cash earnings and gender earnings ratio by wage setting arrangements and gender, May 2006

	Men	Women	Gender earnings ratio (%)
Award	\$731.50	\$705.30	96.4
Collective agreement	\$1,197.00	\$1,016.30	84.9
Individual Agreement	\$1,247.70	\$961.20	77.0

⁵⁵ *Employee Earnings and Hours, 2006*, ABS.

Sex discrimination and sexual harassment

Sex discrimination and sexual harassment can affect any employee. However, the evidence indicates that sex discrimination and sexual harassment affect women more than men. There were 472 complaints made to the Australian Human Rights Commission (then known as the Human Rights and Equal Opportunity Commission) under the *Sex Discrimination Act 1984* in 2006–07, of which almost 90 per cent came from women. A telephone poll commissioned by the Australian Human Rights Commission in 2003 found that 28 per cent of women reported they had experienced sexual harassment in the workplace, compared to seven per cent of men.⁵⁶

Women working in secure, professional employment can also face sex discrimination. In the Australian Public Service Commission (APSC) submission to the current Productivity Commission Inquiry into Paid Maternity, Paternity and Parental Leave, the APSC provided the results of a Survey of female public sector employees who had accessed paid time off work for birth of a child, and followed their subsequent career progression. The Survey revealed 65 per cent of women who accessed paid maternity leave in 2000-01 failed to achieve promotion by June 2007. By contrast, only 42 per cent of women who had not had children in the same period failed to achieve career progression.⁵⁷

The submission suggests that while the arrangements in place within the Australian public service appear to provide strong support for women with young children remaining in public service employment, it is apparent that there is an effect on their career progression.⁵⁸

The Office for Women has reviewed the small but growing literature in Australia (and overseas) that use research techniques to try to identify the sources of wage gaps between men and women. These studies have shown that a purely analytic focus on the average gender pay gap is no longer appropriate as the variations in the gap across the wages distribution and across sector of employment are so large. A particular statistical technique (regression decomposition) has proved useful in examining variations in the

⁵⁵ Australian Bureau of Statistics, *Employee Earnings and Hours, Australia, May 2006*, cat. no. 6306.0, ABS, Canberra, 2006.

⁵⁶ Human Rights and Equal Opportunity Commission 2008, *Gender equality: What matters to Australian women and men. The Listening Tour Community Report*, HREOC, Sydney, 2008, P.13

⁵⁷ Australian Public Service Union, *Submission to the Inquiry into Maternity, Paternity and Parental Leave*, Australian Public Service Commission, June 2008; <http://www.cpsu.org.au/campaigns/news/8636.html>

⁵⁸ Australian Public Service Union, *Submission to the Inquiry into Maternity, Paternity and Parental Leave*, Australian Public Service Commission, June 2008, <http://www.cpsu.org.au/campaigns/news/8636.html>

gender pay gap which cannot be completely explained by straightforward analysis of the data.

The finding of the Office for Women review is that in Australia, as in other countries, about 50 per cent of the gender pay gap remains unexplained, or due to discrimination. However, the effect of discrimination on the pay gap appears to be stronger in Australia than in other countries and is moderated by the segmentation of the labour force by industry and occupation. The concern is the significant role that discrimination seems to be playing in contributing to the gender pay gap.⁵⁹

A key area of concern for the Minister for the Status of Women, the Hon Tanya Plibersek, is women's economic security. To this end the Office will be engaging further in research which informs future policy development to ensure better economic outcomes for women. The Office for Women is developing a strategic research plan to incorporate the Minister's requirements and priorities for 2008-11.

PART 2: THE OFFICE FOR WOMEN GENDER PAY EQUITY ROUNDTABLES

Introduction

In order to increase understanding, and reopen conversation on pay equity, the Office for Women hosted two Gender Pay Equity Roundtables in 2008. The first was held on 30 April 2008 and the second on 30 July 2008. Each Roundtable was attended by representatives from academia, National Women's Secretariats, State and Federal government departments and unions. The Hon Tanya Plibersek, Minister for the Status of Women, attended the first Roundtable.

A list of the Roundtable Participants is at **Attachment A**. A summary of the Roundtable Areas for Action is at **Attachment B**. A list of pay equity resources, referred to by the roundtable participants is at **Attachment C**.

The Roundtables discussion broadly fell with the following five Terms of Reference of this inquiry:

- 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.

⁵⁹ JD Barron & DA Cobb-Clark, 'Occupational segregation and the gender wage gap in private and public-sector employment: A distributional analysis', *IZA Discussion Paper No. 3562*, Institute for the Study of Labor, Bonn, 2008; HJ Kee, 'Glass ceiling or sticky floor? Exploring the Australian gender pay gap using quantile regression and counterfactual decomposition methods', *The Australian National University Centre for Economic Policy Research Discussion Paper No. 487*, ANU, ACT, 2005; A Daly, A Kawaguchi, X Meng & K Mumford, 'The gender wage gap in four countries' *IZA Discussion Paper No. 1921*, Institute for the Study of Labor, Bonn, 2006; R Bray, 'Gender earnings differentials in Australia: A statistical overview of women's earnings', Department of Families, Housing, Community Services and Indigenous Affairs, unpublished report, 2008; AL Booth, 'The glass ceiling in Europe and Australia: Why are women doing badly in the labour market?' Paper presented at the Australian Labour Market Research Workshop, University of Melbourne, 8-9 February 2007.

- 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 need for further legislative reform to address pay equity in Australia.

Term of Reference: The adequacy of current data to reliably monitor employment changes that may impact on pay equity issues

Australia maintains several key datasets which collect and monitor employment and labour force trends: *Average Weekly Earnings, Australia*, ABS (Catalogue 6302.0), *Employee Earnings and Hours, Australia*, ABS (Cat. No. 6306.0) *Employee Earnings, Benefits and Trade Union Membership, Australia*, ABS (Cat. No. 6310.0) and the Department of Families, Housing, Community Services and Indigenous Affairs Household, Income and Labour Dynamics in Australia (HILDA Survey).

The HILDA Survey is a household-based panel study which began in 2001. 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;
- 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.

The range of topics covered in HILDA extends well beyond this to include such things as life satisfaction, health outcomes, neighbourhood characteristics, time usage and work-family balance.

A feature of the HILDA Survey is that modules on specific topics can be included in each wave. Examples so far include:

- Wave 2 - wealth holdings of individuals and households;
- Wave 3 - retirement intentions and retirement planning of people aged 45 years and over;
- Wave 4 - young people's educational and job expectations, the impact of disabilities on work and study, and take up of private health insurance; and
- Wave 5 – fertility.

The HILDA Survey is funded and managed on behalf of the Government by the Longitudinal Surveys Section, Strategic Policy Branch, Department of Families, Housing, Community Services and Indigenous Affairs.

The design, development and conduct of the HILDA Survey has been contracted to a research consortium led by the Melbourne Institute of Applied Economic and Social Research at the University of Melbourne. The other consortium members are the

Australian Council for Educational Research and the Australian Institute of Family Studies.⁶⁰

In its current format HILDA respondents are not asked about their specific type of employment contract. This limits its usefulness as a database for monitoring relationships between forms of employment contract and employment benefits. However it provides useful information for monitoring workplace arrangements, particularly with respect to the arrangement of working hours.⁶¹

Many Roundtable participants noted that at the present time, data sources relevant to monitoring women's overall employment status are both fragmented and partial.

Most Roundtable participants agreed that the Australian Workplace Industrial Relations Survey (AWIRS) (last conducted in 1995) should be resumed, and that the recommendations of the report, *Towards a "Women's Employment Status Key Indicators (WESKI) Database*, by the Women in Social and Economic Research (WiSER) should be implemented.

With regard to reinstating AWIRS, most Roundtable participants noted there is a clear need for the collection of comprehensive, detailed indicators of employment status that are comparable across time. This could be substantially addressed through the introduction of annual, national Workplace Industrial Relations Surveys of the type which have been undertaken in Queensland, New South Wales and Victoria. In addition to providing comprehensive information relevant to specific forms of employment contract and conditions of employment, participants noted that this Survey has the advantage of including a wide range of questions of interest to employers, including issues such as workplace productivity and recruitment. Roundtable participants who supported the reinstatement of the AWIRS recommended priority should be given to the systematic reporting of indicators by age, sex, cultural background, and Indigenous status.⁶²

There was support for the suggestion that the Government should set and commit to concrete targets, with timeframes, for achieving pay equity. Examples of some targets suggested include:

- a 50 per cent reduction in the gender pay gap by 2012;
- a reduction in occupational segregation by a defined date; and
- a defined level of paid paternity leave by a defined date.

⁶⁰ The Household, Income and Labour Dynamics in Australia (HILDA) Survey, <http://www.facsia.gov.au/internet/facsinternet.nsf/research/ldi-hilda.htm>.

⁶¹ A Preston, T Jefferson, & R Seymour R, *Women's Pay and Conditions in an era of changing workplace regulations: Towards a "Women's Employment Status Key Indicators" (WESKI) database*, Curtin University of Technology, Western Australia, 2006.

⁶² A Preston, T Jefferson, & R Seymour, *Women's Pay and Conditions in an era of changing workplace regulations: Towards a "Women's Employment Status Key Indicators" (WESKI) database*, Curtin University of Technology, Western Australia, 2006.

Term of Reference: The need for education and information among employers, employees and trade unions in relation to pay equity issues

There was consensus at the Roundtables that gender pay equity is commonly misunderstood, and that work needs to be done to raise public awareness of the issue.

Participants at the Roundtable noted that in particular, employers, unions and industrial inspectors would benefit from education regarding pay equity issues. It was also noted that Fair Work Australia will have a role to play in education around pay equity.

It was mentioned by some Roundtable participants that any awareness raising project needs to be structured and organised, with Federal and State coordination, and needs to be appropriately resourced. Those participants considered business needs to be supported to recognise that pay equity is in their business interest.

Participants discussed several tools for educating employers, unions, and others regarding pay equity. Gender pay equity audits were considered by many as a practical way to educate business, and have the benefit of providing hard data. The work in New Zealand on gender pay equity audits was recommended by some participants.

It was noted that while gender pay equity audits are a useful educative tool, conducting an audit does not solve the problem in itself – it is equally important to ensure follow-up action.

Legislation was seen to play a strong educative role. Successful prosecution or litigation was seen to have an important role. Equally important is the positive reinforcement of awards for excellence and promotion of best practice examples.

The Equal Opportunity for Women in the Workplace Agency (EOWA) has named August 27 “Equal Pay Day” and is calling on employers to conduct a pay audit in their workplace. Given the gender pay gap, women effectively have to work longer to earn the same money as a man. To match the average wage a man earns during the financial year working full time ordinary hours, a woman has to work an extra 58 days, or a total of 14 months. August 27, 2008 marks the day when women’s average salary catches up to what men have banked by June 30 2008.⁶³

⁶³ Equal Opportunity for Women in the Workplace Agency, *Equal Pay Day: Women short changed as at June 30*, media release, 27 August 2008, http://www.eowa.gov.au/Information_Centres/Media_Centre/Media_Releases/2008_Equal_Pay_Day.asp.

Term of Reference: Current structural arrangements in the negotiation of wages that may impact disproportionately on women

The move towards individualised wage bargaining seems to have disadvantaged women, some Roundtable participants pointed out. For example, data indicates that women's wage outcomes are best under award systems and better under collective bargaining systems than individual bargaining systems.

Research undertaken for Industrial Relations Victoria, *AWA's Collective Agreements and Earnings: Beneath the Aggregate Data*, found that:

- Australian Workplace Agreements (AWAs) are commonly associated with poorer outcomes for employees than registered collective agreements; and
- female casual workers on AWAs (and on unregistered agreements) received average earnings some 7.5 per cent below average award earnings.⁶⁴

Other research, *Assessing the Impact of WorkChoices: One Year on* found that female casual employees experienced particularly poor outcomes under individual bargaining and that the gender pay gap widened by 1.3 percentage points for all Australian women between February and November 2006.⁶⁵

Some participants also noted that women's remuneration fares better where bargaining is supported by unions and is collective, rather than individual, bargaining.

In May 2006, the ABS reported that women covered by collective agreements had an hourly rate that was 11 per cent higher than women on individual agreements.⁶⁶

The ABS data also found that the average weekly earnings gender pay gap on registered individual agreements between men and women was 38 per cent.⁶⁷

Women are more reliant on the federal minimum wage than men (currently \$14.31 per hour).⁶⁸

⁶⁴ D Peetz & A Preston, *AWAs, collective Agreements and Earnings: Beneath the Aggregate Data*, Industrial Relations Victoria, Melbourne, 2007.

⁶⁵ D Peetz, *Assessing the Impact of WorkChoices One Year On*, Melbourne Department of Innovation Industry and Regional Development, 2007.

⁶⁶ Australian Bureau of Statistics, *Employee Earnings and Hours, Australia, May 2006*, cat. no. 6306.0, ABS, Canberra, 2006.

⁶⁷ Australian Bureau of Statistics, *Employee Earnings and Hours, Australia, May 2006*, cat. no. 6306.0, ABS, Canberra, 2006.

⁶⁸ S Hammond, *WorkChoices*, Women's Electoral Lobby, Victoria
http://www.welvic.org.au/site_media/files/Sue_Hammonds_IR_Summary.doc

Term of Reference: The adequacy of recent and current equal remuneration provisions in State and federal workplace relations legislation

Some of the Roundtable discussion focussed on the adequacy of the equal remuneration principle in the *Workplace Relations Act 1996* to achieve pay equity for women.

One of the academics at the Roundtable gave a presentation on the existing equal remuneration principle and proposed ways that it could be better formulated. The equal remuneration principle in the *Workplace Relations Act 1996* is based on ILO Convention 100. (See **Attachment D** for the Equal Remuneration Principle in the *Workplace Relations Act 1996*). This Convention relies on proof that gender based discrimination has occurred before awarding women equal remuneration in a contested claim. (See **Attachment E** for a case example under federal law)

Most Roundtable participants agreed that the equal remuneration principles in State industrial relations legislation have been more successful in advancing pay equity than the equal remuneration principle in the federal *Workplace Relations Act 1996*. (See **Attachment F** – the Dental Care Assistants case)

The following sections reflect Roundtable discussions of the State equal remuneration principles.

The Equal Remuneration and Other Conditions Principle – New South Wales

On 30 June 2000, the NSW Industrial Relations Commission established a new wage fixation principle – the Equal Remuneration and Other Conditions Principle – to address applications of undervaluation on a gender basis.

The Equal Remuneration Principle Case allows applications to be made to re-assess work and re-evaluate the work value of an award, on the basis that:

- the rate of pay does not represent a proper value of the work under traditional work value criteria; and
- that undervaluation is in relation to the sex of those performing the work.

The principle provides a broad range of remedies including increasing rates, changes to conditions of employment, new career paths or changes in incremental scales.⁶⁹

The Equal Remuneration Principle - Queensland

The Queensland Equal Remuneration Principle commenced operation in May 2002. The principle allows the Queensland Industrial Relations Commission to:

- make amends or review awards, and
- value or assess the work of employees in “female” industries, occupations or callings.

In assessing the value of work the Commission must ensure that:

- the assessment is transparent, objective, non-discriminatory and free of assumptions based on gender;

⁶⁹ Department of Premier and Cabinet, New South Wales Government, *Equal Remuneration Principle*, http://www.dpc.nsw.gov.au/publications/memos_and_circulars/circulars/2000/c2000-52.

- prior work value assessments on the application of previous wage principles cannot be assumed to have been free of assumptions based on gender;
- in assessing the value of the work, the Commission is 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.
- relevant matters to consider may include:
 - 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;
 - whether there are features in 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 or casual work, low rates of unionisation, limited representation by unions in workplaces covered by formal or informal work agreements, the incidence of consent awards or agreement and other considerations of that type; and
 - 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 is performed and other relevant work features.

Applicants do not need to demonstrate sex discrimination to establish undervaluation of work. Comparisons within and between occupations are not required in order to establish undervaluation of work on a gender basis.

When the principle has been satisfied (that is undervaluation has been demonstrated to have occurred) an assessment is made as to how equal remuneration is to be achieved. Outcomes may include, but are not limited to:

- reclassification of the work;
- establishment of new career paths;
- wage increases;
- establishment of new allowances; and
- the reassessment of definitions and descriptions of work to properly reflect the value of the work.⁷⁰

The Equal Remuneration Principle - Tasmania

Tasmania has also adopted an equal remuneration principle. In a review of wage fixing principles which took effect from July 2008, the Tasmanian Industry Commission has adopted the following Principle on pay equity.

In summary the Principle:

- defines ‘pay equity’ as equal remuneration for men and women doing work of equal value;
- allows applications to be made for making or varying an award in order to implement pay equity;

⁷⁰ Commission, Industrial Relations Act, Queensland Industrial Relations, *Equal Remuneration Principle*, www.qirc.qld.gov.au/prod_form_leg/rulings/equalremunprincip.pdf.

- establishes that a prior assessment by the Commission (or its predecessors) of the value of the work the subject of the application, and/or the prior setting of rates for such work, does not mean that it shall be presumed that the rates of pay applying to the work are unaffected by the gender of the relevant employees;
- notes that the history of the establishment of rates in the award the subject of the application will be a consideration;
- requires the Commission to broadly assess whether the past valuation of the work has been affected by the gender of the workers;
- requires an assessment of the value of work performed in the industry or occupation the subject of a pay equity application, irrespective of the gender of the relevant worker;
- introduces the requirement to ascertain the value of the work rather than whether there have been changes in the value of the work; and
- allows the Commission to take into account the nature of the work, the skill, responsibility and qualifications required by the work and the conditions under which the work is performed in considering a pay equity application.⁷¹

Term of Reference: The need for further legislative reform to address pay equity in Australia

Industrial and workplace relations in Australia has historically been regulated federally under these sections of the Constitution: Section 51 (xxxv.) Conciliation and Arbitration; Section 51 (xx.) Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth; and Section 51 (xxix.) External Affairs, which enabled the Commonwealth to legislate to implement international commitments such as ILO Convention 100⁷².

Section 51 (xx.) Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth, gives the Commonwealth Parliament the right to legislate with respect to “foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth”. This power has become known as the corporations power.

Until 2006 industrial and workplace relations at the federal level were regulated under Section 51 (xxxv.), “Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State”, also known as the conciliation and arbitration power. In 2006 the High Court case *New South Wales v Commonwealth*⁷³ extended the scope of the federal Parliament’s power by establishing that the corporations power could also be used.

New South Wales v Commonwealth challenged the constitutional validity of the federal Government's WorkChoices legislation. The Court handed down its decision on 14 November 2006, with the majority of the Court finding WorkChoices constitutionally valid. The case thus set the precedent that the federal Parliament can legislate on industrial relations under the corporations power.

Some participants at the Roundtable noted that, as a result of this legislation, the corporations power available under the Australian Constitution, rather than the external

⁷¹ Tasmanian Industrial Commission, *Review of Wage Fixing Principles July 2008*,

http://www.tic.tas.gov.au/decisions_issued/state_wage_case_decisions/principles_2008

⁷² Australian Politics, *The Australian Constitution*, <http://australianpolitics.com/constitution/>

⁷³ [2006] HCA 52 (14 November 2006)

affairs power may allow the federal Government to legislate for equal remuneration. This means that equal remuneration principles used in New South Wales, Queensland and Tasmania may be able to be adopted into federal legislation.

ATTACHMENT A

List of participants at the Gender Pay Equity Roundtables

Name	Organisation
1. Kathy Richards	WomenSpeak Network Coordinator
2. Shivaun Ingles	WomenSpeak
3. Linda White	Assistant Director, Working Arrangements and Flexibility Section, DEEWR
4. Miranda Pointon	Assistant Director, Research and Analysis Branch, Australian Fair Pay Commission
5. Anna McPhee	Director Equal Opportunity for Women in the Workplace Agency
6. Cheryl Seeto	Equal Opportunity for Women in the Workplace Agency
7. Sue Hammond FACILITATOR	Industrial Officer, Community and Public Sector Union
8. Sandra Dann	Working Women's Centre SA Inc.
9. Kerriann Dear	Queensland Working Women's Centre
10. Marie Coleman	Director, National Foundation for Australian Women
11. Jenni Colwill	National Foundation for Australian Women
12. Tricia Rooney	Department of Industrial Relations, Queensland
13. Mairi Steele	Director, Working Arrangements and Flexibility Section, Department of Education, Employment and Workplace Relations
14. Elinor Buckley	Security4Women Network Co-ordinator
15. Jenness Gardner	Manager, Pay Equity Unit Department of Consumer and Employment Protection (WA)
16. Rebekah Stevens	New South Wales Office of Industrial Relations
17. Sarah Turberville	Policy Analyst, Industrial Relations Victoria
18. Tania Ellison	Office of Work and Family, PM&C
19. Catherine Davis	Coordinator, WAVE Victoria Women's Officer, Australian Education Union
20. Linda Pascal	Section Manager, Policy, Office for Women
21. Natalie Cartwright	Assistant Director, Policy Section, Office for Women
22. Jessica Redmond	Policy Section, Office for Women
23. Jean Thomson	Senior Policy Officer ACT Office for Women Department of Disability, Housing and Community Service

Name	Organisation
24. Cate McKenzie	Group Manager Women, Children and Parenting Support
25. Dr Kylie Stephen	Manager, Policy Office for Women, Queensland
26. Sandi MackIntosh	Senior policy adviser, Women Tasmania
27. Annetay Henderson	Office for Women, Attorney-General's Department, SA
28. Meg Smith	University of Western Sydney
29. Kait McCann	Senior Policy Officer, VIC Office of Women's Policy
30. Fran Hayes	National Pay Equity Coalition
31. Jenny Earl	Human Rights and Discrimination Law Policy Adviser, ACT Human Rights Commission; Women's Electoral Lobby (Aust)
32. Cheryl Scarlett	Inquiry Secretary, Standing Committee on Employment and Workplace Relations, House of Representatives
33. Raymond Knight	Standing Committee on Employment and Workplace Relations, House of Representatives
34. Sue Taylor	Labour Market Statistics NSC, ABS

ATTACHMENT B

Summary of options for action from the Office for Women's two Gender Pay Equity Roundtables

(Note that these are not presented in order of priority.)

1. The participants recommended that the federal Equal Remuneration Provisions should be reviewed. They suggested that principles similar to those in New South Wales and Queensland industrial relations legislation should be adopted.
2. The participants recommended that the current Award Modernisation process being undertaken by the AIRC (See **Attachment G**) could be used to address equal remuneration, occupational classifications and pay structures.
3. The participants recommended that a suite of tools be established that could support gender pay equity at the workplace level. This suite of tools could include pay equity auditing tools, job valuation processes, education, advice and support.
4. The participants recommended that compliance mechanisms to ensure equity in the workplace be strengthened. The participants suggested that increasing the powers of the Workplace Ombudsman, EOWA, the Sex Discrimination Commissioner and other relevant authorities, could be one way of strengthening compliance.
5. The participants recommended a national campaign to raise the profile of gender pay equity issues.
6. The participants recommended the establishment of an agency specific to women's employment issues. This agency could provide information and resources on issues specific to women and employment such as undervaluation, recognition of skills, and information on negotiation.
7. The participants recommended that a gender neutral job evaluation standard be adopted as part of the national employment standards.
8. The participants recommended that gender stereotyping in: education curricula, course selections, financial literacy and career counselling should be addressed.
9. The participants recommended that awareness of gender pay equity issues in the workplace should be continued by further strengthening the role of EOWA and HREOC.
10. The participants recommended that a review of the paid care sector including health care, child care and aged care, should be undertaken, with the aim of re-evaluating the current remuneration of paid care work.
11. The participants recommended that economic modelling should be undertaken to examine the cost of *not* ensuring gender pay equity, given the ageing of the population and the current and predicted skills and labour shortages.
12. The participants recommended that data which relates to gender pay inequity be broadened and improved. (See submission for further information).

13. The participants recommended that targets and timeframes for reducing gender pay inequity be established.
14. The participants recommended that stakeholders adopt an integrated approach to working on pay equity, including deciding who undertakes particular action items decided at the Roundtables.
15. The participants recommended that findings from various Inquiries should be researched and integrated to identify strategies to improve pay equity.
16. The participants recommended that legislation should be introduced which requires Fair Work Australia to review all modern award wages and classifications so that it can address equal remuneration.

Resources

Publications

Women's Pay and Conditions in an Era of Changing Workplace Relations: Towards a "Women's Employment Status Key Indicators" (WESKI) Database, Alison Preston, Therese Jefferson, and Richard Seymour, Women in Social and Economic Research (WiSER), Curtin University of Technology, 2006.

Summary (by NFAW): http://www.nfaw.org/assets/socialpolicy/indsec_ir/weskisummary.pdf

Full report: <http://www.cbs.curtin.edu.au/download.cfm?DownloadFile=B4E9A78B-0FEE-00C2-C8276C93FF33C222>

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Putting Pay Equity into Practice: Pay Equity and the Productive Workplace, A Case Study of the NAB/FSU Pay Equity Audit – August 2007, Industrial Relations Victoria, 2007

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The Librarians' Pay Equity Case 2002 – Not Just a Pay Rise, Kate Burnham, The Australian Library Journal, 2004. <http://www.alia.org.au/publishing/alj/53.4/full.text/burnham.html>

Developing Pay Equity Strategies: A post-audit handbook, Department of Consumer and Employment Protection, Government of Western Australia.

http://www.docep.wa.gov.au/LabourRelations/PDF/Work%20Life%20Balance/Developing_Pay_Equit.pdf

Websites

NSW Office of Industrial Relations, Pay Equity

<http://www.workandfamily.nsw.gov.au/payequity/index.html>

Industrial Relations **Victoria**, Pay Equity in Victoria

http://www.business.vic.gov.au/BUSVIC/STANDARD//PC_61635.html

Western Australia Pay Equity in Western Australia

<http://www.docep.wa.gov.au/LabourRelations/Content/Work%20Life%20Balance/Pay%20Equity/index.htm>

Queensland Department of Employment and Industrial Relations, Report of the pay equity inquiry

<http://www.deir.qld.gov.au/industrial/publications/submissions/reports/worthvaluing/index.htm>

Equal Remuneration Principles – Workplace Relations Act (1996)

WORKPLACE RELATIONS ACT 1996 - SECT 623

Equal remuneration for work of equal value

- (1) A reference in this Division to **equal remuneration for work of equal value** is a reference to equal remuneration for men and women workers for work of equal value.
- (2) An expression has in subsection (1) the same meaning as in the Equal Remuneration Convention.

Note: Article 1 of the Convention provides that 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.

WORKPLACE RELATIONS ACT 1996 - SECT 624

Orders requiring equal remuneration

- (1) Subject to this Division, the Commission may make such orders as it considers appropriate to ensure that, for employees covered by the orders, there will be equal remuneration for work of equal value.
- (2) Without limiting subsection (1), an order under this Division may provide for such increases in rates (other than those set by the AFPC) of remuneration (within the meaning of the Equal Remuneration Convention) as the Commission considers appropriate to ensure that, for employees covered by the order, there will be equal remuneration for work of equal value.
- (3) However, the Commission may make an order under this Division only if:
 - (a) the Commission is satisfied that, for the employees to be covered by the order, there is not equal remuneration for work of equal value; and
 - (b) the order can reasonably be regarded as appropriate and adapted to giving effect to one or more of the following:
 - (c)
 - (i) the Anti-Discrimination Conventions;
 - (ii) the provisions of Recommendations referred to in paragraphs 620(b) and (c).⁷⁴

⁷⁴ Australasian Legal Information Institute, Commonwealth Consolidated Acts, *The Workplace Relations Act, 1996*, http://www.austlii.edu.au/au/legis/cth/consol_act/wra1996220/s623.html.

ATTACHMENT E

The HPM Industries Case

Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union and HPM Industries, *Workplace Relations Act 1996* s.170BD Application for Equal Remuneration Orders (C No. 23933 of 1995)⁷⁵

On 6 December 1995, the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU) lodged an application with the Australian Industrial Relations Commission (AIRC) (under the *Workplace Relations Act 1996*) for an order requiring equal remuneration for work of equal value in respect of some employees of HPM Industries, at its site at Darlinghurst, NSW.

The case has made applications for equal remuneration more difficult by setting a precedent that the claimant is required to demonstrate some act of discrimination on the part of the employer in setting the pay rates. The AIRC said as a first step, it had to be satisfied that the relevant rates of remuneration were established without discrimination on the basis of sex. The AIRC refused to adopt the definition of discrimination established by *the Sex Discrimination Act 1984*, and found that discrimination had not played a part in determining the rates of pay.

The AIRC also said that a necessary precursor to establishing discrimination was to establish that the work is of equal value, so followed the precedent that you cannot make an assessment of undervaluation without a reference to a "comparator" group.

⁷⁵ New South Wales Office of Industrial Relations, *Equal pay and remuneration*, <http://www.workandfamily.nsw.gov.au/payequity/report/equalpay>.

ATTACHMENT F

The Dental Care Assistants Case

Liquor Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees and Australian Dental Association (Queensland Branch) Union of Employers (No. 2) (B/2003/2082)

Industrial Relations Act 1999 – s. 326 – application for order
s. 60 – application to increase remuneration⁷⁶

The recent enhancements to State Industrial Relations legislation in Queensland and New South Wales have offered to provision for claims to be lodged that “feminised” work has been undervalued. These actions have directly impacted on the remuneration now offered to dental care assistants.

In the case of the dental care assistants in Queensland, in order to provide pay equity, the Full Bench granted a once off increase of eleven per cent phased in over two years, which commenced in February 2006. In addition, to compensate for future inequities due to the almost complete absence of formalised bargaining under the Dental Assistants’ Award, the full Bench also established an Equal Remuneration Component (ERC).

The ERC is an amount of 1.25 per cent of the base rate to be added after the annual granting of the State Wage Case General Ruling. The rate was expressed as a percentage in order to retain currency and included an amount to compensate for disabilities and safety hazards incurred which are not an unusual feature of the work.

Other benefits granted were financial assistance to obtain qualifications and an increase in the uniform allowance. These measures, in combination with the wage increases, were designed to deliver pay equity in the most effective way considered possible within a system which needed to protect the integrity of the award system.⁷⁷

⁷⁶ Queensland Industrial Relations Commission, *Decision*,
<http://www.qirc.qld.gov.au/qgig/2005/vol%20180/no.18%2002.12.05/b2082%5B2005%5Ddec.doc>

⁷⁷ National Pay Equity Coalition. Women’s Electoral Lobby, National Foundation for Australian Women, *Submission to the Australian Industrial Relations Commission Award Modernisation Process, May 2008, Aged Care Industry Award*, WEL, 2008

Award Modernisation

Note: Information in this Attachment is drawn from Award Modernisation, Australian Industrial Relations Commission, <http://www.airc.gov.au/>

What is award modernisation?

Award modernisation involves the creation of a system of modern awards to operate in conjunction with the new Australian workplace relations system foreshadowed for January 2010. The process will require the Australian Industrial Relations Commission to review all of the multiple-employer federal awards as well as many state awards operating in the national industrial system as Notional Agreements Preserving State Awards (NAPSAs).

How was the process initiated?

The process commenced when the Minister for Employment and Workplace Relations signed a formal request to the President of the Australian Industrial Relations Commission on 28 March 2008 pursuant to s.576C of the *Workplace Relations Act 1996*. The request provides additional guidance to the AIRC on the nature and function of modern awards and on the process generally. It was amended on 16 June 2008 and a consolidated version issued.

How is the process to take place?

The award modernisation process is being overseen by a Full Bench of seven members of the Australian Industrial Relations Commission.

- Justice Giudice, President;
- Vice President Lawler;
- Vice President Watson;
- Senior Deputy President Watson;
- Senior Deputy President Harrison;
- Senior Deputy President Action; and
- Commissioner Smith.

On 20 June 2008 the Full Bench issued a decision which determined:

- the priority industries and occupations;
- a model award flexibility clause; and
- a timetable for the completion of award modernisation.

On 3 July 2008 the Full Bench issued a notice of listing which included:

- details of the arrangements for pre-drafting public consultations to be held in each of the designated priority industries and occupations during July–August 2008;
- a timetable for the consultations; and
- administrative arrangements for the parties.

The pre-drafting consultation timetable was subsequently revised on 22 July 2008 when the Full Bench issued a statement and revised notice of listing. The consultations were held from 4 to 19 August 2008.

Industries assessed as Priority Industries

Priority Industries

- Coal mining industry;
- Glue and gelatine industry;
- Higher education industry;
- Hospitality industry;
- Metal and associated industries;
- Mining industry;
- Private sector clerical occupation;
- Racing industry;
- Rail industry;
- Retail industry;
- Rubber, plastics and cabling industry;
- Security industry;
- Textile, clothing and footwear industry; and
- Vehicle manufacturing industry.

Industries not included for review

- Aged Care Industry (excluding Nursing) and Nursing Occupations;
- Electrical Occupations;
- Gardening and Sportsground Maintenance;
- Graphic Arts Industry;
- Information and Communications Technology Industry;
- Insurance Industry;
- Poultry Processing Industry;
- Professional Engineers and Scientists Occupations;
- Recorded Entertainment Industry; and
- Vehicle Repair, Services and Retail Industry.

When will the process be completed?

The award modernisation request requires the AIRC to:

- complete award modernisation in the priority industries and occupations by 31 December 2008;
- complete the whole of the award modernisation process by 31 December 2009.

The content of modern awards is regulated by ss.576J to 576T of the WR Act.

Terms of Reference

Section 576A of the WR Act provides, among other things, that modern awards must be simple to understand and easy to apply, must be of a safety net character, must promote flexible modern work practices and efficient and productive workplaces and must be in a form that promotes collective bargaining. Section 576B(2) provides that in carrying out the award modernisation process the Commission must have regard to the following factors:

- “(a) promoting the creation of jobs, high levels of productivity, low inflation, high levels of employment and labour force participation, national and international competitiveness, the development of skills and a fair labour market;*
- (b) protecting the position in the labour market of young people, employees with a disability and employees to whom training arrangements apply;*
- (c) the needs of the low-paid;*
- (d) the desirability of reducing the number of awards operating in the workplace relations system;*
- (e) the need to help prevent and eliminate discrimination on the grounds of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, and to promote the principle of equal remuneration for work of equal value;*
- (f) the need to assist employees to balance their work and family responsibilities effectively, and to improve retention and participation of employees in the workforce;*
- (g) the safety, health and welfare of employees;*
- (h) relevant rates of pay in Australian Pay and Classification Scales and transitional awards;*
- (i) minimum wage decisions of the Australian Fair Pay Commission;*
- (j) the representation rights, under this Act or the Registration and Accountability of Organisations Schedule, of organisations and transitionally registered associations.”*