



Minority Report

Introduction and Summary of Coalition Members' Position

On Thursday 26 June 2008 the Acting Minister for Employment and Workplace Relations, The Hon Brendan O'Connor MP, asked the Committee to inquire into, and report on, pay equity and associated issues related to increasing female participation in the workforce.

The Committee has heard extensive evidence from a large number of witnesses in accordance with the Committee terms of reference which required this inquiry to look into the causes of any existing disadvantages in relation to women's participation in the workforce.

In broad terms, the evidence presented to the Committee confirmed that there is indeed a divergence between the experiences of male and female persons within the Australian workforce. The evidence confirmed that participation rates, remuneration outcomes and other conditions within the workforce can in fact be linked to gender. Where such a link can be established, females often experience outcomes that are inconsistent with the same outcomes experienced by males.

In short, as the Government majority report observes in detail, Coalition committee members recognise that there is in fact work to be done to appropriately address pay equity and related matters to increase the rate of female participation in the workforce. The Government majority report makes a large number of recommendations which are framed as being avenues to consider on the path towards addressing issues within the Committees scope of reference.

While the Coalition accepts that these recommendations, if adopted, might facilitate their stated aims, we believe that there are other factors of relevance that have prevented us from accepting all of them unreservedly at this time.

Those relevant factors are discussed within this report and primarily include recent legislative and other developments associated with the *Fair Work Act 2009*, the future system of paid maternity leave and a broad desire to ensure the implementation of options that are effective and without unintended or adverse consequence.

Coalition members believe that the issue of pay equity and increased female participation in the workforce is much too important to be addressed with anything but a considered and strategic approach. The evidence before the Committee demonstrates that achieving pay equity and increasing the rate of female participation in the workforce has been a arduous journey thus far and that there remains a long way to go.

Simply put, there is no 'quick fix' to this issue and therefore any recommendations should be considered as solid building blocks to achieve and consolidate equity rather than an artificial structure that may be ineffective or counter productive in the long term.

Evidence provided to the Committee

The nature and content of evidence provided to the Committee has been exhaustively detailed within the Government majority report and does not require reproduction here.

Coalition members do note, however, that the majority of evidence adduced came from organisations, individuals or groups who can be categorised as being more likely to be aware of issues related to pay equity and workforce participation. Such evidence is particularly valuable and helpful to Coalition members as it enabled succinct opportunities to examine the nature, causes and effect of existing equity and participation issues.

This evidence also resulted in a number of recommendations contained within the Government majority report. However, such recommendations are, in many areas, intended to operate in a manner that will impact on *all* stakeholders and not just those who are particularly aware of the issue at hand.

To this end, Coalition members note the comparative absence of evidence from other relevant stakeholders, particularly those in the private sector. This is, of course, understandable and it is traditionally rare that, for example, a small retail business will possess the resources and time to attend such a parliamentary enquiry and provide a considered submission. Notwithstanding this observation,

many of the recommendations contained in the Government majority report will, or are likely to, affect and impact private sector business, particularly small business.

Coalition committee members believe that it would have been valuable to hear more evidence from private sector stakeholders. While it may be eminently practicable and feasible for a non-private sector stakeholder, such as local government, to implement and comply with various recommendations, the same cannot also be said for those in the private sector.

Fair Work Act 2009

A great deal of evidence presented to the Committee has focussed on the issue of workplace relations. This is unsurprising given the role and purpose of workplace relations legislation within a context of pay and workforce participation.

A number of recommendations made in the Government majority report also focus on alterations that can be made to our workplace relations legislation.

Coalition members of the Committee are mindful that Labor's new workplace system, underpinned by the *Fair Work Act 2009*, is in its infant stages. The Act commenced on 1 July 2009 and will only take full *comprehensive* effect on 1 January 2010. It introduces a number of concepts that are new to Australian workplaces, such as an expanded set of National Employment Standards (NES), a new award system (modern awards) and a new good faith collective agreement bargaining architecture. In short, the new Act represents a fundamental change to the underpinning structure of the Australian workplace system.

At the time the *Fair Work Bill 2008* was introduced, and subsequent thereto, the Government and the Minister for Employment & Workplace Relations have variously described the intention and aim of the new laws. It is unnecessary to repeat that narrative verbatim, except to note that much has been made of the alleged failings of the *Workplace Relations Act 1996* and how the *Fair Work Act 2009* addresses those failings.

Statements were made that the new laws would "...assist employees to balance their work and family responsibilities by providing for flexible arrangements..."¹ and provide "*protection and hope for a better future for the low-paid; a balance between work and*

1 Minister for Employment & Workplace Relations, Fair Work Bill 2008, Second Reading Speech, 25th November 2008, House of Representatives Hansard, 11190

*family life..."*² and that *"Employees with carer's responsibilities will also now be protected from discriminatory treatment."*³

In a recent doorstep interview, the Minister continued this narrative:

"Work Choices was a regime that was bad for women, bad for women workers because we didn't have fair principle when it came to pay equity, we didn't have a recognition of work of comparable value and bad for women workers because Australian Workplace Agreements could slash away pay and conditions and all the evidence showed that it was women workers who paid the price of that slashing.

We've now put a fair work regime in place, a safety net that can never be stripped away, a fair bargaining system, a new bargaining system for low paid workers, all of this is good news for women and we want there to be a fair principle for recognising work of comparable worth. That's what the Fair Work Act provides and that's what the test case will be about."⁴

The test case referred to above is an even more recent development. Announced on 4 November 2009, the case will involve a test of the equal remuneration provisions in the Fair Work Act 2009. Specifically, there will be a focus on workers engaged in the social and community services sectors – a sector about which much evidence was presented to the Committee.

The announcement of this test case was reported as:

"The proceeding is likely to be divided into two parts, with FWA first to set down the general principles governing the making of equal remuneration orders, and then apply those principles to the SACS workers.

ASU assistant secretary Linda White says the "landmark" case could pave the way for improved wages for low-paid female workers across a range of sectors.

"This is historic because it's the first opportunity under the Fair Work Act for the equal pay principles to be set - that is significant for the women of Australia, and given that the 87% of employees

2 Minister for Employment & Workplace Relations, Fair Work Bill 2008, Second Reading Speech, 25th November 2008, House of Representatives Hansard, 11189

3 Minister for Employment & Workplace Relations, Fair Work Bill 2008, Second Reading Speech, 25th November 2008, House of Representatives Hansard, 11193

4 Minister for Employment & Workplace Relations, Doorstop Interview, South Melbourne, 9th November 2009

in the [SACS] industry are women and they are at the front line in seeking social justice for others it is fitting that they are the ones to start the new era," she says.

Labor's introduction of stronger equal remuneration provisions, particularly through the new "comparable value" test, has paved the way for the application, White says."⁵

In a related interview about the test case, the Minister said:

"I think change has come, a lot has changed for women workers and we should remember that and our Fair Work Act is bringing some more changes, some more flexibility to help people, particularly women workers, balance up work and family life at the time that they have a child. Out paid parental leave scheme will make a difference so change is being made step by step, piece by piece.

There is more that needs to be done and this pay equity case is part of the more that needs to be done."⁶

From the above narrative, it is reasonable to draw two succinct observations. Firstly, that the structure of the new *Fair Work Act 2009* as it relates to equal remuneration is considered to be an improvement to the related provisions in the *Workplace Relations Act 1996*; and secondly, that the impending test case will establish principles to address pay equity and by default improve the levels of female participation rates in the workforce.

It is against this background that the Coalition members of the Committee are somewhat perplexed by the recommendations of the Government majority regarding changes to the *Fair Work Act 2009*.

Such recommendations can only represent an acknowledgement that the *Fair Work Act 2009* does not achieve the aims and intentions stated by the Minister and others at the time of its passage through Parliament.

In addition, it is clearly the case that the recommendations were crafted at a time prior to the announcement of the impending pay equity test case.

Regardless of what the recommendations represent, Coalition members believe that it is simply too early to be endorsing recommendations that alter the aims,

5 "ASU wins government backing for "historic" first pay equity bid" Workplace Express, 4th November 2009

6 Minister for Employment & Workplace Relations, Doorstop Interview, South Melbourne, 9th November 2009

operation and outcome of a legislative regime that has yet to take full effect, or be appropriately tested.

The narrative espoused by the Minister and others would lead most to believe that the majority of the recommendations affecting the *Fair Work Act 2009* would be unnecessary. In addition, it is likely that the impending test case will progress that task of addressing issues of pay equity and levels of female participation in the workplace.

Coalition members believe that, given the new nature of the new workplace regime, it should be given time to be appropriately bedded down and then critically examined to determine its impact on the matters falling within this Committee's scope of reference.

Although the recommendations of the Government majority may advance the cause of pay equity and female workforce participation, it is premature to endorse them unreservedly at this time given the new workplace relations regime and impending test case.

Maternity Leave

Recent discourse surrounding maternity leave, particularly paid maternity leave, has also refocused public discussion about the opportunities for females within the workforce.

Evidence before the committee noted a relationship between maternity leave and pay equity/participation rate discrepancies, observing that a female who takes maternity leave is likely to earn less than a male who does not.

Access to unpaid maternity leave exists in both State and Federal systems of workplace relations. The NES for maternity leave, provided under the *Fair Work Act 2009*, expanded the previous minimum entitlement and was described by the Minister in this way:

“Our new National Employment Standards will deliver that flexibility and choice, giving mum and dad a choice to sequence their unpaid maternity leave and unpaid paternity leave to have a parent at home with a newly born child for the first two years of the child's life. And our National Employment Standards will also give the ability for one carer, usually the mum, to request an extra 12 months of unpaid maternity leave and to request the ability to

return flexibly or part time. That's part of our National Employment Standards."⁷

Once again, the NES for maternity leave under the *Fair Work Act 2009* remains in its infant stages and, should the view of the Minister be correct, provides broader options for females than have existed previously. This ought to have a positive influence on matters falling within the scope of this Committee's inquiry.

However, in addition to the NES, now we have a commitment from the Government to introduce a system of paid maternity leave (PML) available on and from 1 January 2011. It is understood that consultations about the practical implementation of PML are currently underway and yet to reach a final form.

Whatever the outcome, we are told that the implementation of PML should have a positive effect on both pay equity and female labour market participation rates.

Such a system of PML will require time to be appropriately implemented and then critically examined and assessed to determine the extent to which such a scheme delivers positive outcomes.

It is for this additional reason that the Coalition members of the Committee do not unreservedly endorse the entire raft of recommendations in the Government majority report. The impending system of PML, combined with a new workplace relations regime, should be allowed time to bed down and then be further assessed to determine the extent to which they address the concerning evidence presented to the Committee.

Government must take the lead

Much of the evidence presented to the Committee came from sectors that, in one form or another, are supported or funded by State Governments, Federal Governments, or a combination of both. This is particularly the case in the social and community services sector, where the evidence presented to the Committee was most compelling.

We earlier noted our concern at the comparative lack of evidence from the private sector regarding matters within the scope of this committee's inquiry. We take the view that while various recommendations may be capable of easy compliance in the government sector, this may not be the case in the private sector (or at least, there is not enough evidence for the committee to make a considered decision.)

We are therefore in the position where many of the recommendations contained in the Government majority report are unsupported by evidence demonstrating that

7 Minister for Employment & Workplace Relations, Joint Press Conference, Newcastle, 29th September 2008

should they be adopted in the private sector, that they would in fact achieve their stated aims.

To this end Coalition members take the view that, were the Government mindful of adopting the recommendations in this report, they should in the first instance be applied only to public sector agencies to determine the extent to which they have a practical and measurably positive impact.

There is, in our view, no benefit to be gained from requiring private sector involvement in the recommendations until they can be demonstrated as positively influencing pay equity and female workforce participation.

Any future Parliamentary inquiries into pay equity and associated issues should be tasked with evaluating the effectiveness of such recommendations within the public sector, prior to any application to the private sector.

Coalition members are mindful that the recommendations considered in the Government majority report are capable of coming at a cost. This cost is, currently, unquantifiable.

However the recent decision of the Queensland Industrial Relations Commission about pay equity, which we understand to align with the impending test case under the *Fair Work Act 2009*, delivered with it an increase in wages for certain workers. Reports suggest that this decision alone required the Queensland State Government to increase its funding for the social and community services sector by \$414 million dollars per year.

It follows that a similar decision at a Federal level will also require an increase in the amounts allocated by all levels of Government for the SACS sector.

Coalition members, therefore, believe that the Government must take the lead in this area. Any recommendations made by the Government majority report should be, in the first instance, limited to the public sector to allow them to be appropriately monitored.

More information required

The Coalition believes that more research and impact analysis should be undertaken to determine the effect of the Government recommendations and the extent to which they are capable of compliance.

We acknowledge that many workplaces are sophisticated and well resourced and would be able to accommodate and comply with many of the recommendations contained in the Government report. However, there are equally as many, if not more, that do not enjoy such a position and who may find it difficult to comply with said recommendations should they be adopted.

From a practical and realistic perspective, it would be a perverse outcome if the requirements so recommended act as a disincentive to employment or an incentive to exacerbate existing problems associated with pay equity. We do not want to see the pursuit of solutions to a problem create a series of new and unintended problems.

Therefore a simple analysis of the cost and benefits should be undertaken with respect to all of the recommendations to the extent that they would apply to the private sector. Such analysis would have been a requirement for Coalition members to unreservedly agree to the recommendations in the Government majority report.

Conclusion

Coalition members are satisfied that there is a gap between the workforce experiences of males and females and that there is work to be done to reduce or eliminate this gap.

However, we are unable to unreservedly endorse the recommendations of the Government majority at this time. Existing and forthcoming developments within, and related to, the areas of workplace relations legislation, paid maternity leave and other relevant considerations cause us to believe that it would be premature to implement the recommendations in total.

A better approach would be, in our view, to examine and assess these developments once they have been completed to determine the extent to which the gap has been reduced. We are hopeful that the problem confirmed by the evidence would be far less at that time.

Mr Barry Haase MP
Deputy Chair

Mr Michael Keenan MP

Mr Rowan Ramsey MP

Dr Andrew Southcott MP