

## Administrative approaches

- 8.1 In addition to proposed legislative changes an array of administrative measures may promote pay equity. The systemic nature and the persistence of a gender wage gap in Australia means that it is unlikely that changes to the legislative regime alone will be able to achieve this outcome. There needs to be a significant shift in community culture and this can also be progressed through the implementation of pay equity considerations across all relevant government activities.

## Commonwealth procurement policy

### Achieving pay equity through Commonwealth contracts

- 8.2 Modern public administration has increasingly used contracts as a way of achieving public policy goals. This is in part due to the extension over time of areas of government activity and more recently the trend toward outsourcing public functions to private and non-government entities. This inquiry and similar inquiries in Queensland and New South Wales have received proposals that government procurement policies be used as a mechanism to promote pay equity.
- 8.3 According to Seddon, it is generally accepted that the Commonwealth's executive power is limited under the Constitution by the legislative heads of power set out in section 51.<sup>1</sup> The same does not apply to the states and

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1 Dr Nicholas Seddon, 2003, 'The Interaction of Contract and Executive Power' *Federal Law Review* 14; see also *Government Contracts: Federal, State and Local* (2<sup>nd</sup> ed, 1999).

territories where executive power is not limited by references to subject matter.<sup>2</sup> Seddon goes on to comment that:

There is much academic controversy about precisely what the limits on the Commonwealth's power to contract actually mean in a practical sense, but it is reasonably safe to say that the limits impose no real fetter on the Commonwealth's power to enter into contracts, with the result that the Commonwealth is for practical purposes in the same position as the states and territories, enjoying an unlimited power to enter into contracts.<sup>3</sup>

- 8.4 This suggests that there is no constitutional limit on the class of persons and business entities the Commonwealth can form an agreement with for goods and services. For example, requiring employers to meet specified standards as a condition of receiving direct Commonwealth funding to aged care and child care facilities may be a way of encouraging pay equity in those sectors. This raises questions, however, of how such requirements might fit with modern award process, minimum wage setting, and enterprise bargaining.
- 8.5 As a general rule, the Commonwealth can use its executive power to enter contracts, without the need for any statutory basis. However, the manner in which procurement takes place is governed by the *Financial Management and Accountability Act 1997* (Commonwealth) and *Regulations* (SLR 2009 No. 41) and *Commonwealth Procurement Guidelines*.

### ***Financial Management and Accountability Act 1997***

- 8.6 Under s. 44 (1) of the *Financial Management and Accountability Act 1997* (FMA), Chief Executives have special responsibility to promote efficient, effective and ethical use of Commonwealth resources. The CEO of a Commonwealth agency has the power to enter into contracts, on behalf of the Commonwealth, in relation to the affairs of the agency and, in doing so, must comply with FMA, the regulations, Finance Minister's Orders, Special Instructions and any other law (s. 44 (2)). Proper use means efficient, effective and ethical use that is not inconsistent with the policies

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2 *New South Wales v Bardolph* [1934] HCA 68; (1934) 52 CLR 455, 474–5 (Evatt J); *Building and Construction Employees and Builders Labourers Federation of New South Wales v Minister for Industrial Relations* (1986) 7 NSWLR 372.

3 Dr Nicholas Seddon, *Government Contracts: Federal, State and Local* (2<sup>nd</sup> ed, 1999). Even if there is a limit, it is very unlikely that anyone would mount a legal challenge because it would be a constitutional, and therefore expensive, case. Running such a case would also be uncertain in outcome because of the controversy about what the limits actually mean in practical application.

of the Commonwealth (s. 44 (3)). The Regulations allow the Minister to issue the *Commonwealth Procurement Guidelines* to which officials must have regard when performing procurement duties.<sup>4</sup> The Act and the Regulations envisage a wide discretion for the Minister to determine how Commonwealth contracts are negotiated and administered.

8.7 The current Procurement Guidelines include the requirement that a finance officer must not discriminate on the grounds of sex, race, and disability in the procurement process (para. 5.2). The rule of non-discrimination is consistent with federal discrimination law (which applies to acts and practices of the Commonwealth) and is part of the procurement policy commitment to effective competition (para. 5.1).

8.8 However, the Guidelines contain:

- no specific principle of affirmative action for female owned businesses even though small business is dominated by women;
- no specific requirement to assess a contractor's performance under Commonwealth law, such as the *Sex Discrimination Act 1984*;<sup>5</sup> and
- no current requirement that a contractor comply with a pay equity obligation to meet pay equity goals or targets over a specified period or provide pay equity analysis.

8.9 In relation to policies that interact with procurement, the Commonwealth Procurement Guidelines state that:

The FMA Regulations require that an approver must not approve a proposal to spend public money unless satisfied, after reasonable inquiry that it is in accordance with the policies of the Commonwealth.<sup>6</sup>

8.10 Given that approval is required to be in 'accordance with the policies of the Commonwealth', firms should not be eligible for government procurement contracts if they have not met the requirements under the proposed pay equity legislation. This raises the question as to whether pay

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4 Reg 8(2) requires an official to make a written record of his or her reasons for not acting consistently with the Guidelines.

5 Paragraph 5.2 states that all potential suppliers must be treated equally based on their legal, commercial, technical and financial abilities and procurement methods must not discriminate against potential suppliers due to their degree of foreign affiliation or ownership, location or size.

6 *Commonwealth Procurement Guidelines*, December 2008, Financial Management Guidance No. 1. p. 7.

equity could be usefully incorporated into the existing Procurement Guidelines.

- 8.11 The Equal Opportunity for Women in the Workplace Agency has received calls from business requesting information on compliance with the intention of applying for government business.<sup>7</sup>
- 8.12 One example of parties from which services were procured was the Commonwealth Attorney General's Department. The Victorian Bar stated that Attorney-General's would not provide its Equal Opportunity Committee with information on the briefing arrangements in relation to male/female number of briefs and fees.<sup>8</sup> The Victorian Bar indicated that there may be a bias towards males in government contracts, although it acknowledged many variables such as seniority, expertise and the tendency for women to brief in areas of welfare and child protection matters would influence the awarding of briefs.<sup>9</sup>
- 8.13 The Australian Women Lawyers found that junior females received on average 1.4 hours for a brief while for men the average was 223 hours. The Victorian Bar pointed out that:
- ... women receive a higher proportion of government briefs than their representation at the Bar, they receive a significantly lower proportion of fees for that work.<sup>10</sup>
- 8.14 The transparency and accountability requirements on Commonwealth departments are not sufficient to enable a peak industry body to obtain aggregated data for research. The Procurement Coordinator ought to investigate, as a matter of urgency, the adequacy of practical implementation of the procurement guidelines to ensure that the outcome meets the equal remuneration criteria.

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7 Ms Mairi Steele, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 20 August 2009, p. 9.

8 Ms Meredith Schilling, Member, Victorian Bar, *Transcript of Evidence*, 18 June 2009, pp. 17-18; Ms Fiona McLeod, Chair, Equal Opportunity Committee Victorian Bar, *Transcript of Evidence*, 18 June 2009, p. 19.

9 See discussion Ms Meredith Schilling, Member, Victorian Bar, *Transcript of Evidence*, 18 June 2009, pp. 20-21.

10 The Victorian Bar, *Submission No. 141*, p. 5. The Victorian Bar acknowledge that some of this variation may be due to the small numbers of female senior counsel (typically the highest earning barristers) and the prevalence of women in less well paid areas (such as welfare and child protection matters), it appears that women barristers appear to be achieving consistently lower fees even in those jurisdictions where greater homogeneity of experience can be assumed.

**Recommendation 33**

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

8.15 The annual reports of departments should include information on implementation of the Procurement Guidelines which would contain the type of data discussed above.

8.16 This approach should be acceptable by and provide valuable information to the business community:

The UK Equalities Review found that there was evidence that using procurement to promote equality in employment is generally accepted by the business community to be a sensible approach for government to take further that requiring suppliers to follow sound equity principles could have a profound impact.<sup>11</sup>

8.17 The Victorian Government has found the use of purchasing power for law firms has increased the amount of work received by women.<sup>12</sup>

**Recommendation 34**

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

8.18 In the United States of America, there have been consecutive Executive Orders applying affirmative action principles to federal procurement policy aimed at promoting substantive equality through access to government contracts for female owned businesses. However, the policy has been restricted to a narrow range of industries in which women are

11 Work and Family Policy Roundtable, *Submission No. 143*, p. 21 citing Rubenstein M, 2007, *Equality, the Private Sector and the Discrimination Law Review: A preliminary Report*, Report presented to the Seminar on Discrimination Law Review, 27 June 2007, Greater London Authority, pp. 17-18 at [www.edf.org.uk/news/MichaelRubenstein.doc](http://www.edf.org.uk/news/MichaelRubenstein.doc).

12 Work and Family Policy Roundtable, *Submission No. 143*, p. 22.

considered to be under-represented and criticised for taking too narrow an approach to measuring under-representation. The women's procurement program created by Congress in 2000 mandates a five per cent contracting goal for women owned small business, but according to media reports, agencies continue to fall short of that target.<sup>13</sup> The lesson from the US may be that, even where affirmative action principles are applied, it must be crafted in a way that does not entrench inequality. While this approach has not been recommended, it represents another method of application that the Government may wish to consider.

## Industry assistance

- 8.19 Industry assistance provides an additional avenue for government to insist on compliance with pay equity principles. This is increasingly important in the light of recent government initiatives to assist small and medium businesses.<sup>14</sup> Countries receiving aid from Australia are required to have a gender equality plan and this principle should also be implemented within Australia.
- 8.20 Some industry assistance is provided subsequent to compliance of the recipients with the *Equal Opportunity for Women in the Workplace Act 1999*. The Government should take steps to ensure that the same conditions apply in relation to pay equity principles. Further, given the importance of the systemic application of the pay equity principles, the Government should revise its current list of applicable industry assistance to ensure that all appropriate forms of industry assistance are included.
- 8.21 Accordingly, the Committee recommends:

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13 Ms Elizabeth Newell, *Omnibus provision suspends controversial women's procurement regulation*, Government Executive at <http://www.govexec.com/dailyfed/0309/031309e1.htm>, March 13, 2009, accessed 16 November 2009.

14 See Dr Kathy MacDermott, Adviser, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 20 August 2009, p. 10.

**Recommendation 35**

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

**Recommendation 36**

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

**Promoting pay equity through the federal grants power**

8.22 Section 96 of the Constitution provides the Commonwealth Parliament with the power to ‘grant financial assistance to any State on such terms and conditions as the Commonwealth thinks fit’. The application of section 96 is extremely broad, and, has enabled the Commonwealth to spend to influence policy, and direct activities in areas of state jurisdiction that it has no constitutional power to effect directly.

8.23 A grant may:

- require the State to apply the money to a general or specified purpose;<sup>15</sup>
- be left to the discretion of a Federal Minister (and paid periodically);
- be provided on condition the State matches the grant with contribution from its own funds;<sup>16</sup> or
- require the State to pay the money to a designated class of beneficiaries to fulfil a purpose pursued by the Commonwealth.<sup>17</sup>

15 *Victoria v Commonwealth (Uniform Tax Case (No.2))* (1957) 99 CLR 575 at 604,605,607; [1957] ALR 761; (1957) 31 ALJ 369 11 ATD 317 per Dixon CJ.

16 *Victoria v Commonwealth (Uniform Tax Case (No.2))* (1957) 99 CLR 575 at 604,605,607; [1957] ALR 761; (1957) 31 ALJ 369 11 ATD 317 per Dixon CJ.

17 *Victoria v Commonwealth (Uniform Tax Case (No 2))* (1957) 99 CLR 575 at 607; [1957] ALR 761; (1957) 31 ALJ 369; 11 ATD 317 per Dixon CJ. See also *Deputy Commissioner of Taxation (NSW) v WR Moran Pty Ltd* (1939) 61 CLR 735; [1939] ALR 357; (1939) 13 ALJ 205; 5 ATD 204 (validity of a grant of financial assistance to the States, conditioned on the recipient States transmitting the

- 8.24 The Commonwealth may, if it chooses, also bypass the states altogether and provide funds directly to a recipient organisation operating in areas of state jurisdiction.<sup>18</sup>
- 8.25 Through the use of special purpose grants the Commonwealth is active in healthcare, schools, skills and workforce development, disabilities services; and affordable housing. It provides funds to local government and private schools through the states. The National Foundation for Australian Women suggested that funding to rural entities be made contingent on improved board diversity.<sup>19</sup>
- 8.26 A state may not be coerced into accepting a grant (legally speaking) but any state that accepts a grant of financial assistance must abide by the terms and conditions attached to the grant.<sup>20</sup> Given the opportunity to impose terms and conditions on states that accept Commonwealth funds, the question arises as to whether s.96 grants offer a practical and effective mechanism through which to implement pay equity goals.
- 8.27 Section 96 enables the Commonwealth to influence policy; direct the way a service is delivered working with and through the states as partners or agents in the expenditure of public funds to fulfil Commonwealth purposes.
- 8.28 Technically speaking, the application of s. 96 is extremely broad and enables the Commonwealth to impose 'terms and conditions as it thinks fit'.<sup>21</sup> However, there are practical and political considerations that suggest this approach may only be employed with significant support from the states. There are also some potential conflicts that might arise if a term of a s.96 grant conflicts with a state based industrial instrument.

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assistance to identified taxpayers in proportion to the taxes paid by them, upheld); *Attorney-General (Vic); Ex rel Black v Commonwealth (DOGS Case)* (1981) 146 CLR 559; 33 ALR 321; 55 ALJR 155 (Commonwealth Parliament could grant financial assistance to the States on condition that the recipient States paid over that assistance to private schools nominated by the Commonwealth).

18 Parties? (1975) 134 CLR 338 (*AAP Case*)

19 National Foundation for Australian Women, *Submission No. 94*, p. 6.

20 Provided compliance with the terms and conditions does not involve the State in a breach of a law; *South Australia v Commonwealth (Uniform Tax Case (No 1))* (1942) 65 CLR 373; [1942] ALR 186; (1942) 16 ALJ 109; 7 ATD 1 *Victoria v Commonwealth (Federal Roads Case)* (1926) 38 CLR 399; *Victoria v Commonwealth (Uniform Tax Case (No 2))* (1957) 99 CLR 575 at 606; [1957] ALR 761; (1957) 31 ALJ 369; 11 ATD 317 per Dixon CJ; *Victoria v Commonwealth (Uniform Tax Case (No 2))* (1957) 99 CLR 575 at 630 per Williams J, at 656 per Fullagar J; [1957] ALR 761; (1957) 31 ALJ 369; 11 ATD 317.

21 Note however that a term or condition may not restrict the free exercise of religion or require a State to breach the law.



## Commonwealth use of prescriptive funding

- 8.29 In 2007, the states 'reacted furiously to the federal government tying university funding to the use of Australian workplace agreements ...'.<sup>22</sup> Under the new *Intergovernmental Agreement on Federal Financial Relations (08-09)* the Commonwealth has moved away from prescriptive terms and conditions to sectoral funding with agreed objectives and performance outputs.<sup>23</sup> It was against the background of increasingly prescriptive tied grants that the Government has launched its new policy of cooperative federalism.
- 8.30 Some commentators suggest, however, that while this has the appearance of respecting greater State independence, in fact, negotiated targets and outcomes will be every bit as prescriptive in achieving agreed national goals. Some bilateral agreements, for example, in vocational education and training, include very specific targets. Pay equity could be incorporated as a mutually agreed objective and become a performance measure with future incentive payments dependent on achieving certain pay equity outcomes. The feasibility and efficacy of this option require further investigation and discussion.
- 8.31 Fitting a pay equity requirement into such a complex set of vertical and horizontal relationships involving a plethora of parties raises a range of potential difficulties. The direct or ultimate recipients of Commonwealth funds are likely to be a wide range of legal entities being both employers and conduits for funds to other organisations. State governments and local councils are employers and grantors of funds to private and not for profit entities that deliver goods and services and perform public functions. The mechanisms by which this approach could be implemented would require consultation on a number of matters:
- How would a legally binding pay equity obligation under a grant agreement intersect with the binding obligations of employers (public and private) under existing federal and state industrial relations laws?
  - Would specific pay rates be a term of subsequent state funding agreements?
  - How would states report on progress? Would this involve data reporting obligations for recipients of Commonwealth funds?

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22 Stephen Scott and David Crowe, 'Grants shift idea backed', *Australian Financial Review*, 1 August 2007 p. 13.

23 *Public Accountability and Performance Reporting*, Schedule C, Inter-Governmental Agreement on Federal Financial Relations p. C1.

- How would a conflict between a pay equity goal or specific rate of pay and a state based wage/pay equity determination be resolved?
- 8.32 Some recipients of funds under s. 96 grants rely solely on Commonwealth funds while others rely on a mix of state and Commonwealth monies, other private earnings, bequests and donations and grants from domestic and foreign philanthropic bodies. A pay rate that reflects a Commonwealth priority, especially where it forms a small part of revenue, may be opposed by employers and the level at which additional funding would be provided needs further consideration.

### Grants versus Referral of Powers

- 8.33 The inclusion of pay equity goals or specific targets would have to be negotiated through COAG and would be relevant across a range of sectors and involve a multitude of actors with ministerial councils potentially taking different views on the priority of pay equity as compared to other sectoral goals.
- 8.34 If the Commonwealth is currently engaging the states in discussion on referral of industrial relations systems, negotiations on pay equity in s.96 grants might add disproportionate complexity to any expected outcomes. South Australia and Victoria have already referred their industrial relations powers to the Commonwealth. Similarly, if the states agreement to uniform or complementary pay equity legislation is a key objective, making the case for specific goals and targets in s.96 grants might appear excessive in addition to being practically difficult to implement.

## Further measures

### Taxation

- 8.35 The Government is currently undertaking a review of the taxation system which should include issues in relation to the effective marginal tax rates for women on pension and income support benefits that also work or want to work. The Industry Super Network has put a proposal to the government in which a 'worker on \$30 000 – or half of average weekly earnings – would have their retirement savings increased by about \$32 000 in today's dollars.'<sup>24</sup> As the majority of Australia's low income earners are

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24 Business News, 'Industry super funds demand radical rethink', *Sydney Morning Herald*, 22 September 2009.

women, there are a number of aspects of the current taxation system that could be adjusted to address the pay equity issues.

### Superannuation and retirement savings

8.36 One key issue is that many women already in the workforce, generally in low social economic backgrounds, are missing out on the benefits of superannuation.<sup>25</sup> Reform of the current superannuation system is an important issue because of the lack of recognition of unpaid caring work.<sup>26</sup>

... women have significantly less money saved for their retirement – half of all women aged 45 to 59 have \$8000 or less in their superannuation funds, compared to \$31,000 for men.<sup>27</sup>

8.37 Women's lower superannuation accumulation compared to men is the 'culmination of the many factors of disadvantage'<sup>28</sup> such as interruptions to paid employment due to child bearing, child rearing and caring responsibilities:

Women's chances of accumulating good superannuation reserves are often low because they experience more broken work patterns, spend fewer years in full time paid work, earn lower wages and have greater responsibility for unpaid work than their male counterparts.<sup>29</sup>

8.38 The National Foundation for Australian Women observed:

Outcomes will improve as the compulsory super system matures, however, this does not address the core gender disparity. On the basis of current balances and average income of those aged 35-44 and the assumption of only compulsory super contribution being

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25 Ms Marcia Williams, Executive Director, Women's Centre on Health Matters, *Transcript of Evidence*, 28 May 2009, p. 7.

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

27 Mr S Kelly, 'Entering Retirement: the Financial Aspects' Paper presented to the *Communicating the Gendered Impact of Economic Policies: The Case of Women's Retirement Incomes, 12-13 December 2006, Perth* cited in Human Rights and Equal Opportunity Commission (2008) *Gender equality: What matters to Australian women and men, the Listening Tour Community Report*, p. 5.

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

29 ACT Council of Social Services, *Submission No. 54*, pp. 8-9 citing Professor Rhonda Sharp, Hawke Research Institute, University of South Australia, Media Release *Women Miss out on Retirement Super*, 10 April 2008 and Diane Olsberg, 'Women and Superannuation Still Missing Out', *Journal of Australian Political Economy* 53, p.164.

made, the average payout for a male aged 60 would be \$183 000 for a female it would be only \$93 000 – half that of the male.<sup>30</sup>

- 8.39 Suggested changes relate to taxation policies, parental leave entitlements, superannuation policies, promotional activities to encourage women to participate in higher paid labour markets, child care strategies and the provision of financial training for older women.
- 8.40 The Australian Maritime Officers Union called for gender analysis of a number of government programs in recognition of the fact that women live longer than men and therefore require more superannuation.<sup>31</sup> Unions collectively called for a number of changes:
- increasing minimum contributions to a goal of 15%, which can be achieved through bargaining or legislation;
  - reducing the contribution tax including removal of the tax on incomes of less than \$70,000 per annum;
  - restructuring superannuation taxes to provide greater equity;
  - extending the entitlement of Superannuation Guarantee to all workers, irrespective of age or minimum earnings;
  - fully disclosing all fees and charges, together with a ban on entry and exit fees and commissions charged on Superannuation Guarantee contributions; and
  - equal treatment of same sex couples in the allocation of superannuation benefits.<sup>32</sup>
- 8.41 The Association of Superannuation Funds of Australia Ltd Research Centre attributed the low levels of superannuation funds for women ‘to a disinclination to sacrifice current spending for future savings, as well as a lack of surplus discretionary income’.<sup>33</sup> Increasing access to superannuation would increase its relevance and serve an educative function for young women about financial security.<sup>34</sup> In support of concerns that young women lack the opportunity and knowledge relating to access arrangements that promote financial security, it was observed that salary sacrificing was higher for men than women in all industries except accommodation, cafes and restaurant:

30 National Foundation for Australian Women, *Supplementary Submission No. 94.1*, p. 2.

31 Australian Maritime Officers Union, *Submission No. 74*, p. 9.

32 Australian Council of Trade Unions (ACTU) and Joint State Union Peak Councils, *Submission No. 125*, pp. 35-6.

33 Association of Superannuation Funds of Australia Ltd research Centre, *Women and Superannuation*, 2001 cited in ACT Council of Social Services, *Submission No. 54*, p. 4.

34 Human Rights and Equal Opportunity Commission (2008) *Gender equality: What matters to Australian women and men, the Listening Tour Community Report*, p. 6.

Table 8.1 Salary Sacrifice (2006) EEH

	Female			Male		
	<i>% salary sacrificing</i>	<i>% sacrificed by those sacrificing</i>	<i>% sacrificed all adult employees</i>	<i>% salary sacrificing</i>	<i>% sacrificed by those sacrificing</i>	<i>% sacrificed all adult employees</i>
Mining	20.3	11.8	3.0	32.4	13.3	5.0
Manufacturing	10.6	11.0	1.9	16.2	12.1	2.8
Electricity, Gas & Water	34.5	6.1	2.4	44.2	11.8	6.0
Construction	6.2	13.8	1.2	9.2	15.0	2.1
Wholesale Trade	6.2	10.1	1.0	12.7	13.0	2.5
Retail Trade	2.9	14.4	0.7	5.3	11.8	1.0
Accom. Cafes & Rest.	3.7	16.7	1.0	1.6	7.1	0.2
Transport & Storage	9.6	12.7	1.6	12.1	12.2	2.2
Communication Services	24.7	15.0	5.6	32.1	18.6	8.1
Finance & Insurance	15.4	11.9	2.4	33.1	12.0	5.5
Property & Bus. Services	7.9	22.3	2.8	11.3	18.5	3.1
Govt. Admin & Defence	9.7	12.9	1.6	17.5	13.8	3.2
Education	21.3	13.0	3.8	34.9	14.2	6.8
Health & Comm Services	26.5	24.5	8.7	37.5	20.9	9.9
Cultural & Rec Services	5.6	19.5	2.0	6.3	13.4	1.7
Personal & Other Services	10.2	13.9	2.1	18.4	17.5	4.2
<b>Total All Industries</b>	<b>13.7</b>	<b>17.8</b>	<b>3.6</b>	<b>16.0</b>	<b>14.7</b>	<b>3.5</b>

Source Department of Families, Housing, Community Services and Indigenous Affairs, 2008, *Gender Earning differentials in Australia: A statistical overview of women's earnings*, unpublished, p. 26

8.42 A review of superannuation law in Australia is required to ensure that women are not disadvantaged. One such review is scheduled three years after the commencement of the *Fair Work Act 2009*.

8.43 A significant gap exists between superannuation payouts to women and men. Women tend to take time out of the workforce and change jobs and careers.<sup>35</sup> The CPSU suggested that government fund a public program to provide women with information about financial literacy.<sup>36</sup>

35 Community and Public Sector Union, *Supplementary Submission No. 13.1*, p. 23.

36 Community and Public Sector Union, *Supplementary Submission No. 13.1*, p. 23.

8.44 Security for Women commented that:

... for women in particular, part time workforce attachment adversely impacts on immediate income level, on their potential career advancement to more senior and better paid positions, and thus impacts on the likelihood of poverty in retirement, due to reduced capacity to make adequate superannuation provisions.<sup>37</sup>

8.45 The ACT Council of Social Services (ACTCOSS) added that:

Disadvantage in the area of superannuation is particularly acute for women from culturally and linguistically diverse (CALD) backgrounds or Indigenous women. Unemployment rates are higher for women from a CALD background and those in employment are more likely to work in manual, unskilled jobs with fewer entitlements than other occupations. The likelihood of these women receiving any superannuation benefit is very low. Aboriginal women also suffer from underemployment and unemployment and rarely have the opportunity to accumulate superannuation. Initiatives such as the ASIC facts sheet *Super and Us Mob* are positive but we suggest more should be done to ensure Indigenous people and people from a CALD background are not disadvantaged in building retirement savings.<sup>38</sup>

8.46 The gap between the superannuation levels of men and women largely reflects the pattern of women's working lives but has decreased since the introduction of the superannuation guarantee.<sup>39</sup>

### Superannuation Guarantee

8.47 Section 19 of the *Superannuation Guarantee (Administration) Act 1992* refers to individual superannuation guarantee shortfalls and requires that a charge of nine per cent of total salary or wages be paid by the employer.

8.48 Section 27 in relation to Salary and Wages: General Exclusions states that:

(2) If an employer pays an employee less than \$450 by way of salary or wages in a month, the salary or wages so paid are not to be taken into account for the purpose of making a calculation, in relation to the employer and the employee, under Section 19.

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37 Security for Women, *Submission No. 17*, p. 2.

38 ACT Council of Social Services, *Submission No. 54*, p. 10.

39 See discussion Mr Andrew Barr, Policy and Research Manager, Australian Institute of Superannuation Trustees, *Transcript of Evidence*, 24 October 2008, p. 55.

- 8.49 A higher number of women engage in part-time and casual employment than men and the resulting absence of the superannuation guarantee falls disproportionately on women.
- 8.50 ACTCOSS observed that:
- ... women whose total earnings will exceed \$450 per month, and work for several different employers, with no job individually reaching the \$450 benchmark ... [will receive] no superannuation. Similarly, women who are not in the paid workforce or who are registered as unemployed or on government benefits are not entitled to superannuation, and most have no independent retirement savings at all.<sup>40</sup>
- 8.51 The Australian Institute of Superannuation Trustees added that:
- Workers who miss out on compulsory superannuation also miss out on the benefits of default basic death and disability cover as well as the opportunity to increase their level of low-cost insurance.<sup>41</sup>
- 8.52 The benefits of the abolition of the \$450 threshold on these women would include the improvement of retirement incomes, access to cost-effective insurance and the opportunity to benefit from the co-contribution scheme; and improvements to the savings behaviour of women.<sup>42</sup> This will also have an educative value as research has shown that participants in the Co-contribution scheme are 'generally committed to continuing and view their contribution as an essential household expense.'<sup>43</sup>
- 8.53 In addition employers benefit through the retention of qualified and experienced employees to grow their business as women will be encouraged to remain in the workforce through having the opportunity to qualify for the superannuation guarantee and the opportunity to make voluntary contributions.<sup>44</sup> The Treasury advised the Committee that:
- In 2007-08, there were 2.25 million jobs which paid less than the daily equivalent of \$450 per month. This covers 18.1 million employee months at an average of \$173 per month.<sup>45</sup>

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40 ACT Council of Social Services, *Submission No. 54*, p. 10.

41 The Australian Institute of Superannuation Trustees, *Submission No. 63*, p. 3.

42 The Australian Institute of Superannuation Trustees, *Submission No. 63*, pp. 3-4.

43 The Australian Institute of Superannuation Trustees, *Submission No. 63*, p. 4.

44 The Australian Institute of Superannuation Trustees, *Submission No. 63*, pp. 4-5.

45 Department of Treasury, *Supplementary Submission No. 151.2*, p. 1.

- 8.54 There were 522 000 people in this group who had only one job and of these 53 per cent were paid the superannuation guarantee notwithstanding the available exemption. Further, Treasury advised that in relation to these employees, superannuation was paid on 63 per cent of these wages.<sup>46</sup>
- 8.55 There were also 240 000 employees who worked in several jobs but none paying over \$450 monthly and 1.5 million who had a job that paid more than \$450 per month.<sup>47</sup>
- 8.56 The National Tertiary Education Industry Union (NTEU) commented that:
- It would be more equitable to require payment of the Superannuation Guarantee to all workers, thereby covering those casuals who have very limited hours of work, or who have their hours spread across more than one employer.<sup>48</sup>
- 8.57 The ACTU observed that removing the \$450 a month exemption would have an impact on superannuation retirement incomes.<sup>49</sup>
- Low income earners have as much need as other workers to accumulate retirement savings. In industries where working for several employers is common, such as retail, hospitality and nursing, many employers are excluded from the Superannuation Guarantee system by the fact that the \$450 threshold applies only to a single employer, and not on a combined income level. For employers, the exemption creates a distortion in incentives for employers, because it can involve comparatively high cost of employment of workers marginally above the threshold.<sup>50</sup>
- 8.58 In 2002 the Senate Select Committee on Superannuation recommended the abolition of the \$450 exemption threshold but this was not accepted by the then government. The Senate Committee pointed out that at the time it was introduced 'the \$450 contribution threshold was necessary as a

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46 Department of Treasury, *Supplementary Submission No. 151.2*, p. 1.

47 Department of Treasury, *Supplementary Submission No. 151.2*, p. 1.

48 National Tertiary Education Industry Union, submission on the retirement income consultation paper in relation to the Review of Australia's Future Tax System, 16 April 2009, p. 4. See also the submission by the Association of Superannuation Funds of Australia Limited.

49 Ms Catherine Bowtell, Senior Industrial Officer, Australian Council of Trade Unions, *Transcript of Evidence*, 3 April 2009, p. 10.

50 Submissions of Australian Council of Trade Unions, Industry Super Network, Industry Funds Credit Control and Australian Institute of Superannuation Trustees to the 'Review into the Tax Office's administration of the Superannuation Guarantee Charge', July 2009, p. 17.



transitional arrangement' when compulsory employers contribution and the proportion of part time and casual workers were relatively lower.<sup>51</sup>

8.59 As workers can now nominate the superannuation fund of their choice, most will already have a super fund.

8.60 In terms of the impact of removing the \$450 threshold:

Modelling by Access Economics shows that the aggregate impact of this measure is small, resulting in a total superannuation assets 2010 – 2041 being 0.326% higher than if no policy change was implemented. However, industry experience suggests it is likely to be quite concentrated, resulting in significant improvements for those individual workers who are most disadvantaged by the current exemption. The modelling supports this intuition, with distributional analysis estimating the adequacy benefit is concentrated among low income earners.<sup>52</sup>

8.61 Further, the report found that the cost to government would only be 0.003 per cent of GDP in 2041 and the submission recommends a review of the \$450 per month exemption.<sup>53</sup>

8.62 In May 2009, the Review Panel on Australia's Future Taxation System released a report on strategic issues for the retirement income system.<sup>54</sup> The Henry Review discussion paper on the strategic issues in relation to retirement income system suggested retaining the \$450 threshold exemption.<sup>55</sup>

8.63 In evidence to the Committee, Treasury commented that companies such as Myer already pay those earning less than \$450 a month the relevant amount of superannuation as a matter of policy 'because it actually makes

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51 Senate Select Committee on Superannuation, *Superannuation and standards of living in retirement, Report on the adequacy of the tax arrangements for superannuation and related policy*, December 2002, p. 64.

52 Submissions of Australian Council of Trade Unions, Industry Super Network, Industry Funds Credit Control and Australian Institute of Superannuation Trustees to the 'Review into the Tax Office's administration of the Superannuation Guarantee Charge', July 2009, p. 17.

53 Submissions of Australian Council of Trade Unions, Industry Super Network, Industry Funds Credit Control and Australian Institute of Superannuation Trustees to the 'Review into the Tax Office's administration of the Superannuation Guarantee Charge', July 2009, p. 17.

54 *Australia's future tax system The retirement income system: Report on Strategic Issues May 2009*

55 *Australia's future tax system The retirement income system: Report on Strategic Issues May 2009*, p. 62.

their pay system easier to manage'.<sup>56</sup> The Australian Institute of Superannuation Trustees commented that:

we are aware in some industries and for some employers it is deemed to be more costly to try to segregate those people who fall under the threshold than it would be to pay nine per cent for everybody ... and the vast majority of people who might fall under that threshold or bubble over that threshold would probably already have an account somewhere in the system. In relation to the administration in the funds, it is more a question of identifying the appropriate account to make that contribution to.<sup>57</sup>

8.64 Treasury argued, however, that the difference between the productivity gap and the rate of real wage increases in the 1990s appears to be the funding of the superannuation guarantee and was of the view that:

although the legal incidence of these payments may be on employers, the economic incidence of the superannuation guarantee is on employees.<sup>58</sup>

8.65 The majority of employers are paying the superannuation guarantee even though not required by law. Employers therefore recognise that it is preferable to do so because it is administratively simpler or it is the fair thing to do or to promote good employee relationship or all of these. It can be assumed that some of the employers not paying the superannuation guarantee do so because it is government policy and are not aware that it may not be business best practice. This is a case where an antiquated government policy no longer reflects current market practices.

8.66 Given the increase in the proportion of part time and casual employees, a large proportion of these are women, and the technical advances in automation of business accounting systems and the extent of community awareness and in line with government's policy of increasing participation in the workforce and decreasing unemployment, workers on lower incomes should receive the same superannuation entitlements as other workers.

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56 Mr Philip Gallagher, PSM Manager, Retirement and Intergenerational Modelling Unit, Department of the Treasury, *Transcript of Evidence*, 10 September 2009, p. 5.

57 Mr Andrew Barr, Policy and Research Manager, Australian Institute of Superannuation Trustees, *Transcript of Evidence*, 24 October 2008, p. 57.

58 Mr Philip Gallagher, PSM Manager, Retirement and Intergenerational Modelling Unit, Department of the Treasury, *Transcript of Evidence*, 10 September 2009, p. 4.

**Recommendation 37**

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

- 8.67 Other categories of employees for whom employers are exempted from paying a superannuation contribution that require consideration are the extension of the superannuation guarantee to maternity leave, those over 70 years of age and those under 18 years who work less than 30 hours per week.
- 8.68 The Australian Institute of Superannuation Trustees strongly supported the view that the paid maternity scheme should have a superannuation component.<sup>59</sup> The example was given of women who 'enjoy parity and promotional parity with their male counterparts', however, Captain Carmen Blanco explained that the requirement to spend long periods at sea limited the career capacity and impacted on other matters such as superannuation:
- Superannuation is built up over an entire career, and currently when a parent is out of the workforce during unpaid maternity or paternity leave a very paltry amount of superannuation is allowed to be paid on their behalf by the working spouse, certainly not equivalent to the amount they would have been able to contribute if they were still in the workforce. If the person is a sole parent then there will be no payments during the time taken for parental leave. Considering the rate of divorce and the longer life expectancy of women, this is certainly going to lead to inequity between the sexes in retirement (Clare 2001), women are currently arriving at retirement with an equivalent of 20 years less savings than men.<sup>60</sup>
- 8.69 In particular, in the light of the move in retirement age to 67 years and the projected increase in the number of people working past retirement, there is a need to review the exemption for those over 70 years of age. Women

59 Mr Andrew Barr, Policy and Research Manager, Australian Institute of Superannuation Trustees, *Transcript of Evidence*, 24 October 2008, p. 55; Australian Institute of Superannuation Trustees, *Submission No. 63*, p. 2.

60 Captain Carmen Blanco, *Submission No. 103*, p. 12.

leave the workforce earlier than men and the availability of the superannuation guarantee may provide further encouragement for women to remain in the labour market longer.

- 8.70 Workers not receiving an employer superannuation contribution, carers and people in the unpaid workforce are not eligible to benefit from the Government's Co-contribution scheme.<sup>61</sup> The Australian Institute of Superannuation Trustees commented that the Co-contribution scheme had been predominantly taken up by older people as young families do not have the disposable income to participate in the program.<sup>62</sup> The uptake of the Co-contribution scheme by women has increased their superannuation savings but the Australian Human Rights Commission suggested that this be extended to carer payments as well.<sup>63</sup>

### **Recommendation 38**

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

#### **Portability of superannuation**

- 8.71 The Australian Institute of Superannuation Trustees suggested that use of existing superannuation funds for payment of employer contributions would be the most cost effective way to proceed.<sup>64</sup> Ausfund boasts that it has low fees and charges; efficient administration services; and a history of strong investment returns. Accordingly this or a similar fund may provide a suitable repository for the superannuation funds.

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61 Mr Andrew Barr, Policy and Research Manager, Australian Institute of Superannuation Trustees, *Transcript of Evidence*, 24 October 2008, p. 58.

62 Mr Andrew Barr, Policy and Research Manager, Australian Institute of Superannuation Trustees, *Transcript of Evidence*, 24 October 2008, p. 55.

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

64 Mr Andrew Barr, Policy and Research Manager, Australian Institute of Superannuation Trustees, *Transcript of Evidence*, 24 October 2008, p. 56.

### Recommendation 39

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

#### Portable long service leave

8.72 Portable long service leave is important for women because of the breaks for family responsibilities. The construction and cleaning industries in the ACT now have portable long service leave. The community services industries in the ACT are also working on this approach.<sup>65</sup> The Australian Services Union suggested that:

... portable long service leave be introduced to alleviate the loss of this entitlement to women due to the nature of their work, and in particular those sectors funded by the government be encouraged to support and provide portable long service leave.<sup>66</sup>

8.73 Recruitment and Consulting Services Association provided an example of an on-hired employee who has been with an agency for several years and who may have worked on 20 different assignments. RCSA raised the possibility of portable annual, sick and paid carers leave provided it was done efficiently and administered properly:

Is there not an opportunity to start looking at a hybrid between casual and permanent employment whereby, after a period of time, you can start accruing; maybe a smaller percentage, but at least nominate to accrue or trade off part of your casual loading towards accruing annual leave, sick leave and paid carers leave entitlements?<sup>67</sup>

8.74 RCSA speculated that possibly 30 per cent of eligible women would take up the opportunity of portable leave arrangements.<sup>68</sup> Four per cent of the

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65 Ms Roslyn Dundas, Director, ACT Council of Social Service, *Transcript of Evidence*, 28 May 2009, p. 4.

66 Ms Jo Justo, National Industrial Officer, Australian Services Union, *Transcript of Evidence*, 31 March 2009, p. 61.

67 Mr Andrew Cameron, Manager, Policy, Recruitment and Consulting Services Association, *Transcript of Evidence*, 24 October 2008, p. 37.

68 Mr Andrew Cameron, Manager, Policy, Recruitment and Consulting Services Association, *Transcript of Evidence*, 24 October 2008, p. 41.

workforce is on-hire and 15 per cent are independent contractors.<sup>69</sup> There is a low level of unionisation for on-hire employees because of the diversity of work they undertake in different assignments.<sup>70</sup>

#### **Recommendation 40**

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

### Office of Status of Women

- 8.75 The Office of Women has established a Women's Interdepartmental Committee to direct whole of government engagement in the pursuit of gender equality. The following agencies are represented at SES level: Attorney-General's Department; Australian Bureau of Statistics; Australian Public Service Commission; Australian Agency for International Development; Department of Agriculture, Fisheries and Forestry; Department of Defence; Department of Education, Employment and Workplace Relations; Department of Families, Housing, Community Services and Indigenous Affairs and Office for Women; Department of Finance and Deregulation; Department of Foreign Affairs and Trade; Department of Health and Ageing; Department of Human Services; Department of Immigration and Citizenship; Department of Infrastructure, Transport, Regional Development and Local Government; Department of Innovation, Industry, Science and Research; Department of the Prime Minister and Cabinet and The Treasury.
- 8.76 The role of the Women's IDC is to lead whole of government progress and advice on:
- Progress on the Australian government's priorities for gender equality, including advice on barriers to improved outcomes and how they can be addressed.

69 Mr Andrew Cameron, Manager, Policy, Recruitment and Consulting Services Association, *Transcript of Evidence*, 24 October 2008, p. 41.

70 Mr Andrew Cameron, Manager, Policy, Recruitment and Consulting Services Association, *Transcript of Evidence*, 24 October 2008, p. 42.

- Options to improve the extent to which gender issues are taken into account in the development, implementation and evaluation of government policies and programs within portfolios and across government.
- Gender equality outcomes in the Australian Public Service particularly in operations and employment outcomes and how these could be improved.
- Australian Government actions in the context of leading other governments, business and the broader community to improve outcomes for Australian women, and women internationally.
- Other issues as required, from time to time by the Minister for the Status of Women and other Ministers of the Australian Government.
- The effectiveness of this Inter Departmental Committee in achieving its intent, through reports to the Minister for the Status of Women, the Secretary of FaHCSIA, and the Department of the Prime Minister and Cabinet, including an independent assessment of effectiveness and a final report to the Minister by October 2010.<sup>71</sup>

8.77 The IDC has 3 working groups

- Economic Security Working Group
- Gender Equality Working Group
- National Plan Working Group

8.78 The whole of government character of the Women's IDC and focus of the Office of Women support its relocation within the Department of Prime Minister and Cabinet. While the current location in the Department of Family and Housing, Community Services and Indigenous Affairs provides an important link with the services provided by that Department, this change would provide greater assurance of a whole of government approach.

8.79 Given the importance of the key policies over a number of portfolios, moving the Office of Women to the Department of Prime Minister and Cabinet would facilitate a whole of government approach.

8.80 The Australian Institute of Management Victoria and Tasmania added that having the increased profile of the Prime Minister would demonstrate the importance of this issue.<sup>72</sup>

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71 Office of Women, *Overview: Women's Interdepartmental Committee*, Exhibit 101.

72 Ms Susan Heron, Chief Executive Officer, Australian Institute of Management, Victoria and Tasmania, *Transcript of Evidence*, 4 December 2008, p. 4.

- 8.81 The Office for Work and Family is situated in the Department of Prime Minister and Cabinet and has announced a \$12 million program for small businesses to implement approaches that assist employees balance work and family obligations.<sup>73</sup> The co-location of the two offices would provide additional benefits in coordination of policy initiatives.

### **Recommendation 41**

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

- 8.82 The Office for Women currently holds gender Pay Equity Roundtables which are attended by representatives from academia, National Women's Secretariats, state and federal government departments and unions.<sup>74</sup> The Committee commends the Office for Women on this initiative and would like to see these continue within the whole of government context within the Department of Prime Minister and Cabinet.
- 8.83 The regulatory impact statements accompanying all relevant Cabinet submissions should contain comment on the impact of the proposal on pay equity as part of the broader social impact assessment. Locating the Office of Women within the Department of Prime Minister and Cabinet would ensure that it is central to the development of key policy initiatives.

### **Recommendation 42**

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

#### Ministerial report to Parliament

- 8.84 The Minister for Status of Women should provide, in addition to the current report on *Women in Australia*, an annual statement to the

73 Ms Sandra Parker, Group Manager, Workplace Relations Policy Group, Department of Education, Employment and Workplace Relations, *Transcript of Evidence*, 18 September 2008, p. 4.

74 Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *Submission No. 112*, p. 15.



Parliament providing a progress report on pay equity and other issues relevant to improving women's economic and financial independence. The statement should be made on or as near as possible to women's pay equity day to emphasise the importance of this to the wider community.

### **Recommendation 43**

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

## **APS departments and agencies**

- 8.85 Under the proposed arrangements for a Pay Equity Unit within Fair Work Australia, government agencies will be required to undertake pay equity audits and develop a pay equity strategy. Therefore, the incorporation of a brief report on pay equity strategies and outcomes in annual reports to Parliament will provide additional accountability. This will enable Senate and House of Representatives committees to initiate inquiries into any matters arising.

### **Recommendation 44**

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

- 8.86 Further, the Australian Public Service Commission should provide information on pay equity issues in its State of the Service reports. Agencies now operate under enterprise bargaining and individual agreement making arrangements with no central underpinning classification framework. This has resulted in disparity within organisations and between organisations on the basis of gender.

**Recommendation 45**

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

- 8.87 Wage gains on average in the public sector have been greater than in the private sector this decade.<sup>75</sup> Women comprise 57 per cent of Australian Public Service (APS) employees.<sup>76</sup> The median remuneration for women is lower than that for men at all levels except the APS4 level and attributed this to longer median lengths of service for males.<sup>77</sup> The longer service of males was attributed to slower promotion rates, the recent recruitment of a greater number of women and the interruption of women's service because of family commitments.<sup>78</sup>
- 8.88 In the Australian Public Service wages are set by collective agreements and salaries are linked to classifications which contain a number of increment points and remuneration levels are dependent on the 'size and nature and the labour market in which the various agencies operate and their funding arrangements.'<sup>79</sup>
- 8.89 Women in the APS are employed in the lowest-paying agencies, and in the lower levels of those agencies which the CPSU attributed to the underevaluation of the work in these agencies and ongoing fiscal constraints.<sup>80</sup> The CPSU believed this reflect the way government values work and not about productivity.<sup>81</sup>

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

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

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

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

79 Ms Nicole Pietrucha, Group Manager, Better Practice, Australian public Service Commission, *Transcript of Evidence*, 16 October 2008, p. 2.

80 Mr Stephen Jones, National Secretary, Community and Public Sector Union, *Transcript of Evidence*, 26 September 2008, pp. 66, 69.

81 Mr Stephen Jones, National Secretary, Community and Public Sector Union, *Transcript of Evidence*, 26 September 2008, p. 71.

- 8.90 The CPSU argued that there are substantial costs involved in the development of separate agency collective agreements and the return to a single pay structure has the potential to address a number of pay equity issues within the public sector as well as potential savings.<sup>82</sup> The development of a framework to promote collective bargaining, equality, participation, flexibility and mobility' could start to address some of the pay inequity evident in the APS.<sup>83</sup>
- 8.91 The 3 September 2009, the Prime Minister, the Hon Kevin Rudd MP, announced an Advisory Group on Reform Government Administration is considering the performance of the public services including the efficiency in all aspects of government operations. According the Committee recommends:

#### **Recommendation 46**

**That the government incorporate in the current review of the Australian Public Service the adequacy of the current collective agreement wage setting processes to meet pay equity principles required under Australia's international obligations.**

#### Gender equality scheme

- 8.92 Under the model operating in the United Kingdom, all public authorities are required:
- to prepare and publish a gender equality scheme;
  - to consider the need to include objectives to address the causes of any gender pay gap;
  - to gather and use information on how the public authority's policies and practices affect gender equality in the workforce and in the delivery of services;
  - to consult stakeholders in order to determine gender equality objectives;
  - to assess the impact of the authority's current and proposed policies and practices;

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82 Mr Stephen Jones, National Secretary, Community and Public Sector Union, *Transcript of Evidence*, 26 September 2008, p. 77.

83 Community and Public Sector Union, *Submission No. 13*, p. 1.

- to implement the actions set out in the authority's scheme within 3 years, unless it is unreasonable or impracticable to do so; and
- to report against the scheme every year and review every three years.<sup>84</sup>

8.93 It is appropriate that in addition to the public sector agencies attention to pay equity principles in relation to employees that this consideration should also extend to the implementation of government policies and programs. Accordingly the Committee recommends:

### Recommendation 47

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

### Code of Practice

8.94 The United Kingdom has an *Equal Pay Act 1979* which includes an objective of pay equity and the *Sex Discrimination Act 1975* which relates to equal remuneration.<sup>85</sup> In 1997, a Code of Practice on Equal Pay came into force which provides guidance on the application of pay equity but has limited compliance due to the voluntary nature.<sup>86</sup>

In the UK codes of practice have also been used to good effect. The UK Equal Opportunities Commission has developed a *Code of Practice on Equal Pay* for employers. That Code sets out the practical obligations of employers in respect of the laws of the European Union and the United Kingdom.<sup>87</sup>

8.95 Code of Practice on Equal Pay serves as a guide for the application of pay equity, based on a series of practices derived from court rulings. The Code outlines the five stages to be followed in order to carry out a pay review on a voluntary basis:

84 Equal Opportunity Commission of Western Australia, *Submission No. 131*, p. 15.

85 Department of Education, Employment Workplace Relations, *Submission No. 58*, p. 27.

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

87 Australian Council of Trade Unions (ACTU) and Joint State Union Peak Councils, *Submission No. 125*, p. 39.

- (i) decision on the scope of the review and identify the required data. The employer may select which jobs are to be compared and which are not. The employer may decide to include or exclude employee representatives;
  - (ii) determination of equal jobs and those of equal value. The employer is free to choose the method s/he considers fit, and that may or may not rely on a job evaluation method;
  - (iii) gathering of data on wages in order to identify the pay gaps. It is specified that only significant pay gaps should be considered;
  - (iv) identification of the objective causes of any significant pay gap; and
  - (v) formulation of a plan of action and follow-up.<sup>88</sup>
- 8.96 In 2006, an International Labour Organisation Working Paper criticised the British model on the basis that the model ‘focuses more on the establishment of non-discriminatory pay practices than on the elimination of the pay gaps themselves; more on achieving equal opportunities rather than equal results’.<sup>89</sup>
- 8.97 A Code of Practice is not necessary in the Australian context in addition to the measures already recommended in this report.

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

89 Chicha, M T, 2006, *A Comparative analysis of promoting pay equity: models and impacts*, International Labour Office, Geneva cited in DEEWR, *Submission No. 58*, p. 229.

