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## **SUBMISSION**

### **HOUSE OF REPRESENTATIVES EMPLOYMENT AND WORKPLACE RELATIONS COMMITTEE**

**Inquiry into Gender Pay Equity**

**NATIONAL PAY EQUITY COALITION  
and**

**WOMEN'S ELECTORAL LOBBY AUSTRALIA Inc**

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## **Executive Summary:**

This Submission aims to present the House of Representatives Inquiry into Gender pay equity and female participation with the overall causes and effect of gender wage inequality on women workers and on Australia's economic and social well being. It identifies the drivers of gender wage inequality and makes recommendations to strengthen current legislative and structural arrangements. It suggests a comprehensive range of legal, industrial and non-legal mechanism be utilized to advance pay equity.

The Submission has the following structure:

The Introduction gives a brief background of the National Pay Equity Coalition and Women's Electoral Lobby and their long involvement in pay equity in Australia.

The Submission then makes Recommendations. The Recommendations are substantiated by what follows in the Submission. They make suggestions to strengthen and improve the Industrial framework and other legal mechanisms that address equal pay. We suggest review and updating the equal remuneration provisions of the Workplace Relations Act, the application of equal remuneration objects of the Award Modernisation Act in the award modernization process, the strengthening of Minimum entitlements and collective bargaining processes. We then make recommendations to breath life back into the Equal Opportunity for Women in the Workplace Act and its Agency.

In Part One of the Submission we explore the impact that the gender wage gap has on women, their wage outcome and their lifetime social and economic experience. We also explore the impact that this has on labour force participation, labour market, the personal cost and the cost to Australia's economic prosperity. We identify that a significant cause of gender wage inequality is the undervaluation of women's work, which exacerbates systemic discrimination and low pay.

In Part Two of the Submission we propose that many strategies need to be adopted to address this systemic problem. That a integrated approach of various legal and non-legal methods are required and need to be applied at an individual, collective, organizational, occupational and workplace level. We consider the strengths and weaknesses of the legal institutional arrangements and make our case for ways that we see will tackle current inadequacies.

We conclude that the new Federal Government has a unique opportunity to structure Fair Work Australia and other Agencies to deliver a more active and effective approach to solving this economic and social problem. One thing is clear is that inaction; faith in the market, industrial and educational progress and reliance on the astute employer has not solved the problem. A more effective integrated approach, which makes use of various forms of legislation, a more rigorous reporting and monitoring body and interventionist programs, and policies are required.

We also attach several documents by way of information for the benefit of the members of the Inquiry.

## **Introduction:**

The National Pay Equity Coalition (NPEC) and the Women's Electoral Lobby (WEL) take this opportunity to thank the members of the House of Representatives for holding this Inquiry into Pay Equity.

NPEC was formed in 1988 to address the issue of unequal earnings for men and women in Australia, over the working week, over the years of workforce participation, and over a lifetime. Its activities include publicity, education, lobbying of governments: State and Federal, and regular representations to industrial tribunals and government inquiries on all issues relating to women's earnings and workforce participation.

WEL is a feminist non-party political lobby group founded in 1972. WEL has long contributed to policy development and debate and continues to act as a research/advocacy group on issues that still disadvantage women in Australia today. WEL is dedicated to creating a society where: women's participation and potential are unrestricted, acknowledged and respected; and where women and men share equally in work and in society's responsibilities and rewards.

It will be no surprise to the members of the House that our two organisations have had a long involvement in pursuing equality for women at work and in their social and economic lives.

Over almost four decades our organisations have played major roles in earlier Equal Pay Cases and in the more recent attempts at resolving the pay equity problem, as intervening Parties in Equal Remuneration Test Cases, and in Submissions before the Senate and House on industrial legislation. We have made submissions before the National Wage Cases, Family Leave Test Cases, Fair Pay Commission, Award Restructuring Taskforce and Award Modernisation Process.

We have long-gained institutional memory of the equal pay process, its successes and failures, of promises and of disappointment. It would be fair to say that no other community organisations in Australia have played a greater role in the fight for equal pay. Despite what can only be said to have been a period of inaction and regression at a Federal government level over the last decade, we view new initiatives with optimism and enthusiasm. The promise of the new government to create Fair Work Australia gives a unique opportunity to shape an industrial and legislative regime that could deliver the economic and social benefits that will arise from a non discriminatory wage outcome. One that delivers women the proper value for the work that they do and that attains and secures their economic and social potential.

## **RECOMMENDATIONS**

- 1 All legislative arrangements, whether they are in the industrial relations framework or other legal mechanisms, provide the right to equal remuneration for work of equal value, consistent with ILO Convention 100 (Equal Remuneration Convention) and the related Recommendation 100.

- 2 To give full effect to the ILO instruments, legislation must provide for collective as well as individual rights.
- 3 Legislation should provide concepts and means for valuing work.
- 4 Further submissions should be called for regarding the best place for the equal remuneration legislation and the appropriate government support for it when the shape of the new workplace relations and sex discrimination legislation has been decided.
- 5 All relevant legislation should provide rights of equal remuneration for workers in all economic sectors, including the public sector, private sector, and not-for-profit organisations.

## **LEGISLATIVE REFORM**

### **The Industrial Relations System**

- 6 We recommend a review of the Equal Remuneration Provisions of the Workplace Relations Act so that the current requirements to prove discrimination and establish comparable work value are no longer required. The Provisions and Principles established in Queensland and New South Wales should be used as models.
- 7 We recommend that the Australian Industrial Relations Commission satisfy Section 576B(2) of the Award Modernisation Process and ensure that, when making modern awards and reviewing awards, they satisfy equal remuneration requirements.
- 8 We recommend that the Commission be empowered to hear, make awards, conciliate and arbitrate on matters of equal remuneration and that these decisions be available at occupational, industry and workplace levels.
- 9 We recommend that the jurisdiction of State Tribunals to hear and arbitrate on Equal Remuneration Test Cases be restored to the situation prior to the WorkChoices amendments.
- 10 We recommend that minimum wage rates be set by the proposed Fair Work Australia and that they be adjusted annually.
- 11 Many workers are denied superannuation as they work several casual jobs. We recommend that employer superannuation be levied on all hours worked whether they are casual, part-time or full-time employees.
- 12 We recommend a specialist division for Equal Remuneration be established within the proposed Fair Work Australia.

- 13 We recommend that rules governing collective bargaining contain rights to call parties to negotiate, to conciliate and, if parties fail to reach agreement, to empower Fair Work Australia to arbitrate agreements and awards between parties. These agreements and awards should be applicable at an occupational, industry and workplace level.
- 14 All types of employees should be covered: full and part time; temporary; casual and seasonal; contractors who are economically dependent on a particular employer; and employees of contractors who enter into contracts with the Federal government.
- 15 Remuneration should be defined to include all elements of work-related rewards including allowances, superannuation, work-related benefits and bonuses, and performance payments.
- 16 Legislation should state how equal remuneration claims can be pursued in each type of employment contract (including collective agreements, award and over-award payments).
- 17 A broad definition of employment is needed to reflect the diversity of types of employment arrangements, increased use of contractors and the need to provide the right to equal remuneration throughout the workforce.
- 18 The legislation should specifically state that it provides a right to equal remuneration for work of equal value and that right covers both work that is the same or similar in nature and work that is not similar in nature but the same or comparable in value.
- 19 The legislation should specifically cover equal pay for equal work as well as equal pay for work of equal value.
- 20 The legislation should state that lodging an equal remuneration claim will not require proof of sex discrimination, nor require the use of comparators, but rather rely on providing sufficient evidence that gender has affected the valuation and remuneration of the work, for a fresh investigation of the value of the work by a gender-neutral means.
- 21 Any defences to an equal remuneration for work of equal value claim should be clearly defined.
- 22 It should be clear that gender pay inequities cannot be justified on the basis that they arise from collective bargaining or awards.
- 23 There should be very limited – if any - defences in respect of equal remuneration.
- 24 The legislation must provide institutions that can make determinations and provide collective remedies, including making orders that change the terms of industrial instruments prospectively (including collective agreements).

- 25 There should be limited access under certain circumstances to damages for economic loss and back pay, where the employer has unreasonably delayed or obstructed proceedings and/or has not made good faith efforts to investigate and resolve the matter.
- 26 The legislation should include the right to request information about the remuneration of specified workers or groups of workers, with employers not to unreasonably deny the request and with a right to challenge the employer's refusal to provide the information.
- 27 There should be provisions regarding discovery of information about potential comparators for both individual and collective claims together with provisions for protecting the personal data and privacy of individuals.
- 28 The legislation should require Fair Work Australia to undertake reviews of industrial instruments on equal remuneration for work of equal value with the reviews to be carried out progressively over the next five years.

#### **Other Legislation: Equal Opportunity for Women in the Workplace Agency**

- 29 We recommend an independent review of the role and function of the Equal Opportunity in the Workplace Agency (EOWA).
- 30 The legislation requires strengthening and the Agency must fulfil the obligations of the Act. Over the last decade the effectiveness of the Agency has diminished in implementing rigorous reporting and monitoring of organisations covered by the Act. Reports to the Agency must be more rigorous and provide more and better information on wages, employment structures, access to leave, training, forms of employment contracts and occupational arrangements. This information will provide useful data in assessing effects, causes and drivers of gender inequality in pay.
- 31 The legislation should require that organisations undertake pay equity reviews and audits. These reviews should be carried out in good faith by all participants, with a disputes process for complaints.
- 32 The legislation should enable industry and sector approaches as well as organisation-based processes.
- 33 We suggest that it should require that pay equity plans are developed and implemented.
- 34 The proposed requirement to undertake pay equity reviews should be supported by a government policy that those who do not undertake and document the reviews as required are ineligible for government contracts or industry assistance.
- 35 These reviews should be required to be undertaken jointly by employers, employees and unions, where present.

- 36 The reviews should be required to be undertaken at least every five years.
- 37 Requirements should include keeping records of reviews and pay equity plans and providing them to a labour inspector on issue of a notice.
- 38 Provision should be made for periodic evaluation of a sample of the review reports and pay equity plans, supplemented by other appropriate research and investigations.
- 39 The legislation should be supported by a Code of Practice providing guidance on how equal remuneration can be investigated and implemented. The Code of Practice would provide definitions of central concepts and technical advice.
- 40 A range of tools and guides for assessing the value of work in gender-neutral ways should be developed to support the legislation and the Code and assist in carrying out the required equal remuneration reviews.
- 41 The tools and guidelines should cover a range of methods that commonly contribute to job sizing, job ranking and remuneration setting including job evaluation, competency assessment, and work value approaches used by industrial tribunals.
- 42 The use of particular tools and techniques should not be mandated since there are many ways of approaching pay equity.
- 43 Effective development, promotion and support of the tools will require a government-based body with the appropriate technical expertise. That body should work to develop an effective network of practitioners (in the private market, consultancies, unions, and non-government organisations) to support equal remuneration reviews and other equal remuneration processes.
- 44 The development of standards and tools should draw on experience of the use of existing resources, including those from various jurisdictions in Australia, the United Kingdom, Canada and New Zealand.
- 45 Guidance should be developed for parties to use in achieving equal remuneration through collective bargaining (and developing and maintaining modern awards).
- 46 In addition to technical support in tools development and training and support for the operation of the equal remuneration jurisdiction, Government will need a monitoring, reporting and evaluating role to maintain momentum, fine-tune implementation, and provide accountability for sustained progress.
- 47 The legislation should provide for maintenance and follow-up of implementation of actions identified in equal remuneration reviews and equal opportunity reports.
- 48 Government leadership should be articulated in a commitment that public sector organisations will undertake equal remuneration reviews in the next three years.

- 49 Government policy statements and guidance, articulating the relationships between equal remuneration and other factors and processes affecting achieving equal remuneration, including collective bargaining policies and strategies and human resources and management policies and strategies, and policies and processes on setting minimum wages, should set out the checks and measures that will ensure consistency with equal remuneration commitments.
- 50 Regulations should be developed under the Equal Opportunity for Women in the Workplace Act, defining what “all reasonably practicable steps” to address any issues affecting equal opportunity for women means, as a clear basis for decisions on waiving.
- 51 Minimum standards for compliance with each of the Act’s requirements should be developed through a robust stakeholder engagement process. The standards should cover the level and type of information required in reports in relation to each requirement (for example: workforce profile; each employment matter; or workplace program).
- 52 EOWA should report its decisions on waiving against the regulations defining “all reasonably practicable steps” and should report its decisions about compliance with the Act in relation to the standards for programs and reporting.
- 53 Further consideration should be given to extending the coverage of the Act to public sector employers.

### **Adequacy of Current Data**

- 54 We refer to our recommendations on a review of the EOWA. We note that in their current form the reports submitted to the Agency contain little data that would enable any true assessment of equal opportunity in workplaces. We suggest that more rigorous reports and better directed research would provide more reliable monitoring and better data.
- 55 We also refer to recommendations made in the Women in Social and Economic Research ‘*Women’s pay and conditions in an era of changing workplace regulations: Towards a Women’s Employment Status Key Indicators*’. We support their suggestions for a collection of comprehensive, detailed indicators of employment status. We note the loss of the extensive resource that was available in the Workplace Industrial Relations Survey. We support their recommendations on better and wider collection and access to data.



## **PART ONE: PAY EQUITY: THE CURRENT SITUATION**

While there are many ways to quantify the differential between male and female earnings in Australia, all of which have their strengths and weaknesses, the ABS Average Weekly Earnings data is the most commonly cited measure of pay inequity. The latest published ABS Average Weekly Earnings Catalogue 6302.0 (February 2008) indicates that women, on average, earn 65.6% of male weekly earnings. When only full-time employees are taken into account, women earn, on average, 81.1% of full-time male earnings. When overtime earnings are removed from the equation and only ordinary hours counted, women working full-time earn, on average, 84.4% of full-time male weekly earnings.

	Males	Females	Female earnings as a percentage of male earnings
Total weekly earnings	\$1071.20	\$702.20	65.6%
Full-time adult total earnings	\$1261.00	\$1023.00	81.1%
Full-time adult ordinary time earnings	\$1192.00	\$1006.60	84.4%

**Figure 1**  
**Average Weekly Earnings, Australia, Feb 2008, ABS 6302.0**

The 'gender pay gap' has been markedly resistant to improvement over the long term. Looking at data for hourly rates of pay for private sector non-managerial employees, women were earning 85% of male hourly rates in 2006. This was the same gender pay gap that existed in 1983.

(see Attachment I Figure 2: *Gender Pay Equity Ratios 1967-2006*, Smith 2008)

### **Factors Contributing to Pay Inequity**

The factors contributing to pay inequity present a complex picture. It will be obvious from the above data that part-time work is a major contributor to the male-female earnings differential.

Indeed the facts that, on average, women work fewer hours per week and see fewer years of employment over a lifetime can be seen as significant contributors to pay inequity, not to mention their impact on lower retirement incomes for women. However, the pay gap that persists even with full-time workers suggests additional factors are at play. These include the segregation of women into lower paying occupations and industries (a notable feature of the Australian labour market) and the undervaluation of the skills of female dominated occupations by employers and by the industrial relations system.

Differences in education and workforce experience between men and women also contribute. However, even when women match men in education level and work experience, men receive higher financial rewards.

The nature of wages bargaining systems also has an impact on pay inequity. Women are more likely to be concentrated in jobs covered by minimum rates awards only and to have less access to the benefits of collective enterprise bargaining agreements. For example, in the female-dominated accommodation, cafes and restaurants industry, 57% of employees are covered by award only, while 8.8% are covered by a collective agreement. By contrast, in the male-dominated electricity, gas and water supply industry, 0.9% of employees are covered by award only, and 84.4% are covered by collective agreements (from data compiled by Bray and Waring, 2008).

With the exception of the factors of part-time hours and less overtime worked by women, it is extremely difficult to quantify the amount each of these factors contributes to the gender pay gap.

### **Pay Equity Strategies**

Pay equity strategies adopted by feminists in Australia have depended on which factor contributing to pay inequity they have selected for attention. For example, a focus on the factor of gender occupational and industry segregation has given rise to educational and employment strategies to encourage women into non-traditional jobs and industries, and strategies to encourage and support women into management and executive roles within their organisations.

A focus on the undervaluation of skills in the kinds of work that most women do has given rise to strategies to change the way the industrial relations system values women's work, at the occupational and industry level.

A focus on the differential impact of awards and collective enterprise agreements on women has yielded strategies to ensure minimum award rates are maintained at an adequate level, and strategies to challenge the development of a system where pay increases are mainly achieved through enterprise or individual bargaining.

## **NPEC's and WEL's Focus on the Industrial Relations System**

The National Pay Equity Coalition and the WEL have, for the last twenty years, focused most of our efforts on the factors of the undervaluation of women's work and the increasing decentralisation of wages bargaining in Australia. Much of our work has been in the formal industrial relations system.

From our early days we have appeared in the Australian Industrial Relations Commission to press for the adoption of new wage-fixing principles which would allow for a fair valuation of women's work. We have opposed the move to enterprise bargaining as the main path for pay increases since the early 1990s. We point out that de-centralised bargaining has a detrimental effect on pay equity outcomes. All international evidence and Australian research indicates that de-centralised bargaining has failed to improve gender wage relativities and in fact produces a worse result. (Whitehouse, Gregory, Hammond and Harbridge, Hall and Fruin). We point out that the major improvements in resolving pay equity have come through decisions from the State and Federal industrial tribunals. The ability to make Decisions that effect whole classes of workers has a significant impact on spreading pay equity.

We opposed the move to Australian Workplace Agreements in the Workplace Relations Act 1996. We appeared in the NSW Pay Equity Inquiry in 1998 and the NSW Equal Remuneration Principle proceedings in 2000. We have appeared in the current Federal Award Modernisation proceedings and have made a substantial submission to this process.

## **Key Developments in Pay Equity**

There have been several key stages in industrial relations developments on pay equity in Australia between 1969 and the present.

These stages can be summarised as follows:

- 1) 1969 and 1972 Equal Pay Principles adopted by the (then) Australian Conciliation and Arbitration Commission, tested by the 1986 comparable worth case;
- 2) Award restructuring and the minimum rates adjustment process;
- 3) 1993 Federal legislative amendments, tested by way of the 1995-1998 HPM proceedings;
- 4) New equal remuneration principles at State level (2000, 2002) following State based pay equity inquiries; and
- 5) WorkChoices.

## **1969 and 1972 Equal Pay Principles**

The first Federal equal pay decision in 1969 prescribed equal pay for equal work. Women could claim equal pay if they were performing work 'of the same or a like nature and of equal value'. The decision had little impact, since only a small proportion of women workers were doing the same work as men.

In 1972 the Federal Commission adopted a new and more far-reaching principle of 'equal pay for work of equal value'. This led to the wide-scale dismantling of 'male' and 'female' classifications in awards. However, in some cases former female classifications were simply incorporated at the bottom of the previous male wage structure, and generally there was no investigation of the actual value of work done by women, the assumption being that 'women's work' was worth less.

In 1986 there was an attempt by the union movement to have the concept of comparable worth adopted by the Commission to advance the application of the 1972 principle. Essentially this concept provided for equal pay for work of equal value to be achieved by comparing the value of work performed by women employees with the value of work performed by male employees engaged in different work for the same employer.

This case was unsuccessful, with the Commission finding that the concept of comparable worth was incompatible with its historical reliance on work value as a means of assessing the value of work. The Commission ruled that the 1972 principle was still available for implementation, but at the same time narrowed the opportunities through which the principle might be utilised.

### **Award Restructuring and the Minimum Rates Adjustment Process**

The processes of award restructuring and minimum rates adjustment were commenced in the industrial relations system in the late 1980s. These processes had the capacity to improve the relative wages of women workers because they involved the creation of new relativities and the alignment of rates across awards for male and female dominated occupations and industries. They also promised the adoption of skill-based classification structures for all occupations, which would give many women access to a career path for the first time.

While gains were made in some areas, in others the establishment of award relativities was still based on assumptions about the lesser value of women's work. Classification structures providing career paths did not eventuate.

### **1993 Federal Legislated Amendments**

1993 amendments to the Industrial Relations Act spelt out the entitlement of men and women to equal remuneration, and gave the AIRC the capacity to issue equal remuneration orders. Based on ILO Convention 100, the provisions required the Commission to establish rates of remuneration 'without discrimination based on sex'.

The HPM case (1995-1998) was the only application under these provisions that proceeded to final arbitration. Rather than widening the scope for equal remuneration claims, the reference to discrimination, and in turn the Commission's interpretation that applicants must demonstrate that disparities in earnings have a discriminatory cause, tightened the grounds on which equal remuneration claims could be heard in the Federal system.

## **New Equal Remuneration Principles at State Level**

As a response to the plateauing of gender pay equity ratios and uncertainty regarding the capacity of the Federal system to address pay equity, a number of States initiated pay equity inquiries in the late 90s and early 2000s.

In NSW, Queensland and Tasmania these inquiries resulted in new Equal Remuneration Principles being adopted by their Industrial Relations Commissions (NSW 2000, Tasmania 2000, Queensland 2002). In shifting the focus of industrial tribunals from discrimination and comparable worth to the historical undervaluation of women's work, these developments represented a major breakthrough for pay equity. The concept of undervaluation overcame the assumption that earlier rates had been set correctly, but did not require demonstration that the rates had been set incorrectly because of sex discrimination. The test of undervaluation did not revert to a male standard in order that applications be successfully prosecuted. Applicants could use a range of comparisons, including other areas of feminised work. The Queensland Principle, was capable of application to a wide range of industrial instruments.

The Principles in New South Wales and Queensland jurisdictions recognised the need to ground their application in industry awards and minimum wage determination. This approach recognised the strong reliance of women on minimum rates of pay in awards and their disproportionately low engagement in enterprise bargaining.

Following the adoption of the Equal Remuneration Principles, unions in NSW and Queensland made a number of successful equal remuneration applications for female-dominated awards. In NSW unions were successful in winning significant pay increases for State government employed librarians, library officers and archivists, and for child care workers. In Queensland, unions won significant pay increases for dental therapists and child care workers.

## **WorkChoices**

The advent of WorkChoices in 2005 spelt an end to these promising developments in pay equity in the industrial relations system. The *Workplace Relations Act* (as amended) retained the 1993 Federal legislative amendments for equal remuneration for work of equal value but with an explicit reference to a 'comparator group of employees' and increased complexities in access to this remedy.

The WorkChoices amendments specifically excluded the operation of the new State Equal Remuneration Principles. Furthermore, the erosion of the award system heralded by WorkChoices threatened a disproportionate effect on women's pay, given their reliance on minimum rates awards.

# PAY EQUITY AND WOMEN'S LOW PAY

## Factors contributing to pay inequity: the low pay relationship

The factors contributing to pay inequity present a complex picture. Much of the problem stems from the fact that women work in low paid occupations and sectors of the economy. Women are concentrated in low paid jobs and sectors of the labour market. The five Cs: caring; cashering; catering; cleaning; and clerical.

In 2004, 41% of all women employees earned less than \$500.00 per week, compared to 19% of men. Studies by Masterman, Pocock and May indicate that there has been a growth in the number of women characterised as low paid: from 15.9% in 1989-90 to 27% in 2004 (Masterman, Pocock and May 2007). Women workers are more likely to rely on the Minimum Wage. The Minimum Wage has now declined to 54% of overall median weekly earnings.

Minimum Wage	\$543.78
Hourly rate	\$ 14.31
2008 increase per week	\$ 21.66

These factors highlight the importance of a strong minimum wage in the resolution of the gender pay gap. When a large sector of women workers rely on minimum rates of pay, the level of the minimum rate compared to average weekly earning is an important issue.

Women are more likely to be concentrated in jobs only covered by minimum rates awards and to have less access to the benefits of collective enterprise bargaining agreements. For example, in the female-dominated accommodation, cafes and restaurants industry, 57% of employees are covered by award only, while 8.8% are covered by a collective agreement. By contrast, in the male-dominated electricity, gas and water supply industry, 0.9% of employees are covered by award only, and 84.4% are covered by collective agreements (from data compiled by Bray and Waring, 2008).

ABS occupational earnings indicate that women work in occupations with low minimum rates of pay:

Men's work		Women's work	
Panel Beater	\$825.00	Child Carer	\$747.00
Motor Mechanic	\$841.00	Hairdresser	\$594.00
Printing Trade	\$976.00	Education Aid	\$710.00
IT Network prof	\$1392.00	Social Welfare prof	\$860.00

According to Unions NSW, a comparison of the pay rates of a female-dominated area like apprentice hairdressing and a male area like apprentice building trades highlights the pay divide.

A first-year apprentice hairdresser earns \$247.28 per week while a first-year building trades junior trainee can earn \$326.30, or nearly \$80 a week more, even though their skill sets are similar.

Some commentators have argued that the pay equity problem can be explained by the fact that women work less hours and that they work in low paid jobs. While women do work less hours, the nub of the problem is that they are low paid because their work is not properly valued. Working part-time or lesser hours is no justification for underpayment for the value of work performed. We refer the Committee to our submission to the Aged Care Industry Award Modernisation.

In a recent study conducted by Grimshaw and Rubery for the European Work and Employment Research Centre '*Undervaluing women's work*':

Low valuation and visibility of skill and status. Skill or pay status attached to a job or occupation reflects the status of the occupants as well as influencing their current social position. Skill status is socially constructed, by social actors. A particular dimension to this argument is the link made by social actors between work performed in the home and similar work performed in the wage economy. Thus care work in the labour market may attract a low valuation, since care work in the home is performed by women and for free. The related issue is the lack of visibility of women's skill. Numerous studies have pointed to the fact that occupational classification schemes have much more finely defined categories for men's work than for women's work. (2007:21).

### **Factors that Contribute to Women's Low Pay**

- Concentration of women in part-time work.
- Form of contract.
- Feminisation of industries: as women move into new job areas, lowering of wage rates.
- High job satisfaction: women's apparent higher satisfaction with work at a given wage level; employers less likely to feel under pressure to improve wages for employees who are satisfied with their work. Trade off between monetary rewards and non-monetary rewards. E.g. Aged Care.
- Low valuation of women's work associated with the perception of women as second income earners.
- Low valuation embedded in payment systems: women starting at lower pay rates.
- Failure to re-assess changing nature of work and skill.
- Undervaluation of women's work.
- Low valuation and visibility of skill and status: unrecognised skills.

The NSW Commission identified as relevant the following factors:

- low visibility;
- low union participation;
- working in small workplaces;
- working in service rather than product related markets;

- high incidence of consent award wage movements;
- high incidence of part time and casual work; and
- work which is described as creative, nurturing, caring and so forth.

Other relevant institutional factors identified were:

- treatment by industrial tribunals;
- regulation; and
- treatment of and access to qualifications and perceptions of male and female-dominated work.

The NSW Commission also noted historical lack of recognition of the skills of female-dominated work and work value tests and assessments that emphasis and value technical and visible skills (for example in manufacturing) over relational and human services skills, especially in more recently emerging human services work. In some cases, qualifications requirements have increased without recognition of increased value of the work. There has often been lower levels of control over entry into female dominated occupations which has affected labour supply and the ability to claim a wages premium. The Commission also noted that occupational segregation itself can contribute to undervaluing of female-dominated occupations.

### **Pay Equity: A Lifetime Problem**

A significant issue for the Inquiry to consider is the relationship between pay equity, low pay and the consequences for women's lifetime earnings and retirement earnings. This is an important issue for policymakers in the light of ageing demographic projections.

Jefferson and Preston put the cost of pay inequality of women's retirement income at about a 35% difference between male and female baby boomers in superannuation accumulation (Jefferson and Preston 2006). We know that women are more likely to rely on the full pension and that average retirement payouts of superannuation are much lower for women than for men. In 2004 the average retirement payout for men was \$110,000. Whereas women's average was \$37,000 (ASFA Report).

We know that women are more likely to remain in the low pay sector and this has implications for superannuation accumulation. This is further exacerbated if minimum wage rates are low as a proportion of average weekly earnings.

### **The Central Issue is Work Value**

When attempting to address pay equity we must acknowledge that the gender pay gap and pay equity are different concepts. The gender pay gap is the aggregate figure of male wage rates compared to the wage rate received by women. Pay equity is the wage rate for the value of the work performed. ILO Convention 110



The key question of pay equity is how women's work is to be valued. This is a social, industrial and political question as well as a technical one. It relates to how work is valued in general and how gender enters into work value and institutional and market arrangements. The key issue to address is low pay resulting from the undervaluation of skills and work value in female dominated occupations and industries. The issue to be addressed is how current arrangements can provide the appropriate institutional and technical mechanisms to redress the problem.

### **Gender Related Undervaluation**

A careful industrial history of how the work in question has been valued is an important way of establishing undervaluation. The history needs to deal with how the traditional criteria of work value, especially skill, qualifications, and working conditions, have been approached by industrial parties and tribunals.

Showing undervaluation requires demonstrating that significant elements of work value have not been taken into account or given enough weight in evaluating the work. A case cannot proceed without sufficient basis that the existing rates are not appropriate for the value of the work. Establishing that the undervaluation is gender-related requires connecting important aspects of the work and how it has been valued with the sex of the workers.

The NSW Pay Equity Inquiry provided some indicators of likely gender-related undervaluation (including female dominated occupation, low union membership, high part-time and casual workforce, and little industrial regulation. More detail is provided in Appendix one). It has to be shown that these (or other) characteristics of the workforce and its industrial history have been related to the undervaluation.

The Equal Remuneration Principle requires that the applicant establish that the undervaluation of work is related to the sex of the workers doing it, while specifying that this is not a discrimination test. The gender-relatedness test is a weaker one than the relationship that has to be demonstrated in proving discrimination. An important aspect of showing the connection between the sex of workers and undervaluation of the work is the history of occupational segregation in the award.

In the Equal Remuneration Principles case, the Full Bench said it was improbable that it could be established where women were less than 60% of the workforce. In the NSW Nurses' case<sup>7</sup>, the Commission said there was not sufficient evidence of how the work of the wards person had been valued and the comparisons presented between that work and the work of Assistants in nursing (AINs) were not adequate to show undervaluation of AINs' work. It was not enough, to meet the criterion of gender-relatedness of any potential undervaluation, to show that the wards persons were mainly men and the AINs mainly women.

## **GENDER WAGE INEQUALITY AND THE PARTICIPATION NEXUS**

A significant issue for policymakers will be the ability to improve participation rates in line with demands for Australia's future economic needs. While women's participation has increased, most increases have occurred in part-time employment. If we look at both

Australian and international workforce participation we find a correlation between improvements in the gender wage gap and women's participation.

The recent OECD Employment Outlook found that 'by affecting labour market returns discriminatory practices will discourage labour market participation.' (2008:185)

Other international studies explain the gender pay gap and women's workforce experience. Grimshaw and Rubery highlight the effect on turnover: the link between workers' perception that they are properly remunerated and whether or not they stay at their jobs.

Labour turnover is a significant cost to employers and addressing the issue of pay equity and workers' perception that they are remunerated properly for the work they do has an impact on decisions as to whether workers decide to stay in jobs, occupations and organisations. Grimshaw and Rubery found in their comprehensive study in the United Kingdom that:

'One indication of a mismatch between quality of work and the respective wage is pervasive evidence across a variety of sectors that businesses face significant costs caused by high staff turnover and unfilled vacancies. Costs include: recruiting and inducting staff; difficulties meeting customer targets; loss of orders and intangible costs of loss of organisational memory; and costly temporary agency work to fill vacancies. DfES estimated average cost to employers of each leaver as 2,500 pounds for sales staff and 4,300 pounds for managers.

Existing staff, forced to cope with heavier workloads and low morale, feel resentful and eventually leave, perpetuating a downwards spiral (DfES 2002).' (Grimshaw and Rubery 2007:121)

## **A Sociological Analysis**

There are structural issues in the Australian wages system that relate to how pay has been set and inbuilt problems in achieving genuinely equal pay for work of equal value. These are not the issues discussed in this part of the submission. Instead, the following data and analyses look at some of the significant social and cultural factors that continue to affect women's pay, relative to men's pay in the same or equivalent occupations.

There is no disputing the statistics which show that many women, particularly those with family responsibilities, tend to work fewer paid hours than men. These statistics need to be taken alongside the figures on domestic work/care which show women do more hours, even when there are no children/care responsibilities involved.

However, the gender differences start before most people have children or domestic responsibilities. This is demonstrated by the average earnings, from the 2006 Census, of those aged 20-24, which already show women as earning less, the higher the pay rates go.

<b>Age 20-24</b>	<b>Men</b>	<b>Women</b>
<b>\$600-799</b>	15.5%	14%

\$800-999	8.6%	6.7%
\$1000-1299	4.7%	2.3%
<b>Total</b>	<b>28.8%</b>	<b>22%</b>

This difference emerges in early adulthood when time commitment is not likely to be affected in any significant way by family demands and time out of paid work. High level job holder figures also reflect differences: e.g. an EOWA survey of senior managers show that women are just 12% of senior executives of ASX top 200 companies. Men earn more money than women.

There is an evidence of gender differences in the unpaid work sectors. Women still do most of the unpaid work in households and communities, as shown in the 2006 Census:

- Women do 5-14 hrs of housework on average, men do less than 5hrs;
- All people do more housework when they leave home, but 69% of men did less than five hrs compared with only 49% of women;
- Domestic work:
  - Less than 5 hrs                      women 15%    men 25%
  - Between 15-29 hrs                women 17 %    men 7%
  - More than 30 hrs                  women 19 %    men 4%
  - No unpaid work                      women 15%    men 25%

cat no 2069.00 Census table

Parents, even young ones under 25, do more housework than other adults, yet only 43% of these fathers did more than 5 hrs versus 80% of women. Even very young parents show a gendered time difference in housework and child care, so current patterns will continue.

## Unpaid Carers

62% of unpaid carers are women, with more women being carers than men at every level until they are over 75.

Age of carers	Men	Women
15 – 34	5%	7%
35 – 54	9%	15%
55 – 74	11%	17%

This affects life time earnings: the data on retirement income shows how little women will have compared to men on retirement. Even those under 25 already show gender differentiated balances and these will get worse as they divide tasks, paid and unpaid, between them. Using unit records from the Australian Bureau of Statistics *2003-04 Survey of Income and Housing*, ASFA's Report on Australians' superannuation balances 'Are Retirement Savings on Track?' shows that the average retirement payouts in 2006 are likely to have been \$130,000 for men, and \$45,000 for women. However, there are other differences:

- 24.3% of the group surveyed reported having no super at all, such as low paid/casual workers and social security recipients (mainly women);
- The age group 24-34 shows male balances of \$15,823 versus females of \$11,751. By ages 35-44 males have more than double female totals, as child rearing cuts in; and
- Women hold 30% of the Super funds, up from 23% in 1994,

## Mothers and Employment

The 2005 ABS *Pregnancy and Employment Transitions Survey* showed that of the 467,000 mothers whose youngest child was under two years of age, 39% (181,000) had been in paid employment since the birth of the child. Of the women whose youngest child was aged under two years and who had been in paid employment since the birth of the child:

- 82% (148,000) worked part time; and almost half (45%, or 81,000) worked 15 hours or less per week;
- during the ten years from August 1996 to August 2006, the percentage of mothers aged 25 to 34 years (with children aged under 15) who were employed increased from 46% to 52%;
- this upward trend was similar for mothers aged 35 to 44 years (with children aged under 15) among whom the percentage employed increased from 64% to 68%;
- employed mothers continue to make greater use of specific working arrangements than employed fathers to help them care for their children;

- the proportion of employed mothers who used specific working arrangements to help them care for their children aged under 12 years increased from 69% in 1996 to 74% in 2005;
- the working arrangements most commonly used by employed mothers were flexible working hours and permanent part-time work (used by 44% and 36% of employed mothers respectively) and, to a lesser extent, working at home (used by 18%);
- the proportion of employed fathers who used working arrangements to care for their children under 12 years of age increased over the ten year period but was still low;
- employed fathers using working arrangements to help them care for their children aged under 12 years increased from 26% in 1996 to 34% in 2005; and
- flexible working hours (used by 25% of employed fathers) were by far the most common working arrangement used by employed fathers to help care for their children.

The above data indicates that women often work fewer hours and accommodate their children and family demands in different ways to men. However, these figures need to be read in a context which takes into account the often unrecognised social and political assumptions that structure so-called choices. Workplaces have essentially not changed in the expectations of workers, and still do not accommodate balancing care and work without prejudice. The following section looks at some other data that indicates continued inequalities that are gender, not choice based. They derive from assumptions both internal and structural that affect what we might see as free decisions.

### **The Effects of Stereotyping, Bias and Prejudice**

We have used a series of newspaper and on line reports, published in this year, to give a quick overview of the reporting of the situation of women in the workplace. The various studies written up in the media and quoted below show that workplaces do not treat women equally. This will be part of the reasons that women earn less.

The first is a study of PhDs which shows clearly that an equal level of higher education does not give equal outcomes, even when family circumstances are similar.

A study of gender differences in early post-PhD employment in Australian universities<sup>1</sup>, based on responses from the most highly educated sectors of society, about 42% of graduates in 1999 -2001 surveyed for this study were female. The report stated that female graduates already indicated that they had fewer and less close interactions on average with their supervisors, and fewer options for papers at conferences. Female graduates earned about \$8,363 per year less than men. The following quotes show the gender differences.

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<sup>1</sup> The influence of PhD Experience on Women's Academic Careers **June 2008** Associate Professor Maryanne Dever, Associate Professor Warren Laffan et al  
The University of Queensland ABN 63942 912 684

“Not all of the respondents in employment appeared to be in secure employment. 29 percent were on fixed term contracts and three percent in casual employment. A significantly higher proportion of female graduates were in these less secure employment situations and were more likely to work part time. At the G08 universities significantly fewer female graduates were in supervisory or managerial positions compared to male graduates and this gender difference was more pronounced for graduates with children. While 90 percent of male graduates with children were working full-time, only 69 percent of female graduates with children were working full-time.”

“Female graduates worked to a greater extent in academic teaching and in advising or mentoring students, while male graduates worked to a greater extent in undertaking research, managing and supervising others and product development.”

“The general conclusion supported by this study is that there are indeed significant differences between male and female PhD candidates in attitudes, family circumstances, the social context of PhD research, employment outcomes, and career development. In all of these matters women are less likely than men to report positive outcomes.”

“As might be expected, the differences in employment status for men and women discussed above manifested themselves in income levels. Thirteen percent of respondents reported annual gross salaries below \$40,000 and 16 percent above \$100,000. ...35 percent of women working in universities earned under \$60,000, compared with 28 percent of men. The differences were even greater in other organisations where, of those earning under \$60,000, 40 percent were female and 21 percent male.”

“Sixty two percent of PhD graduates in the 2006 PhD Outcome Survey, (60% females; and 55% males) reported that they had children. While gender differences for graduates living without children were non-significant, they were highly significant for graduates with children.....Sixty three percent of male graduates with children were permanent employees, while only 54 percent of female graduates with children held such employment contracts. Furthermore: 43 percent of female graduates with children were employed on a fixed term or casual basis; compared to 32 percent of male graduates with children.”

“Significant gender differences occurred for seven of the work activities listed below. In particular, female graduates worked to a greater extent in academic teaching and in advising or mentoring students, while male graduates worked to a greater extent in undertaking research, managing and supervising others and product development. **There were no significant gender differences for the areas of knowledge used in the job.**”

We have bolded the last point as it indicates the core of a problem that distinguishes the gender of the worker from the content of their knowledge.

Another study, reported in the media, illustrates the question of prejudice.<sup>2</sup>

“PROOF that having children is a career killer has arrived with a study showing that two-thirds of women who take maternity leave do not get promoted. The [Australian Public Service Commission](#) studied female public servants who took maternity leave in 2000-01 and checked whether they had been promoted by June 2007.

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<sup>2</sup> [Boys' club keeps women down](#) *NEWS.com.au*, 29 Apr 2008

It found 65 per cent of women who had taken maternity leave in 2000-01 had not received a promotion in the six years after taking maternity leave. This compared with the 42 per cent of women without children who had not received a promotion over the same period. The alarming results come despite the fact the public service has some of the most family-friendly work provisions in Australia, including 12 weeks paid maternity leave and flexible working hours.”

The comments below, later in the article, identified the problems:

“National Foundation for Australian Women spokeswoman Marie Coleman was not surprised by the figures and said mothers were missing out on promotions because they were unable to be a senior manager and work part-time. Ms Coleman, the first-ever female public service permanent head, said it was time to re-engineer the workplace so senior jobs could be done part-time or job shared and have more flexible starting and finishing times. She said that only when men were encouraged to take part-time work and use paternity leave and family leave would the workplace opportunity be levelled.”

The claims that this may be the result of individual choice is undermined by another survey, Equal Opportunity for Women in the Workplace Agency Director Anna McPhee said the data documented what women already knew: "...having a child brings a great opportunity cost to their career. I think it is certainly concerning that women are being discriminated against because of their family situation," she said. The agency's survey of 800 women found most of them wanted more responsibility at work, greater autonomy and promotion. She also said “the problem could only be solved if jobs were redesigned”.

Another newspaper report on another EOWA survey shows that both male and female workers know there are prejudices at the work place<sup>3</sup>. The article stated:

A QUARTER of Australia's working women say females are not treated equally in the workplace - and one in five of their male colleagues agree. In fact, nearly half of all men admit their workplace is a "bit of a boys' club", according to new research to be released today. Commissioned by the [Federal Government's Equal Opportunity](#) for Women in the Workplace Agency, the study found widespread concern about the way Australian bosses were handing out promotions.

More than half of those surveyed - both men and women - said promotions were not always based on merit. More than a third of women thought that females had to "work a lot harder to prove themselves" and that their male colleagues were often promoted more quickly.

Agency director [Anna McPhee](#) said the survey of more than 1600 people showed working women aged 16 to 65 - dubbed Generation F - still battled unfair obstacles in the office. Gender biases and old-school attitudes are preventing Generation F's full participation in the workforce," she said. And with labour shortages affecting many industries, she warned the sidelining of women's careers was not in the national interest. "If women's ambition and career plans are recognised and supported they can make a major impact on Australia's productivity at a time when it is widely recognised that we need all hands on deck," she said.

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<sup>3</sup> *Boys' club keeps women down* **By Melanie Christiansen**  / April 29, 2008

In other results, the study found nearly half of all women did not believe their employer genuinely supported the concept of work-life balance and 42 per cent said they did not have access to flexible work conditions. Nearly a quarter said their workplace did not meet the needs of working parents. Asked about their reasons for leaving their last job, one in 10 blamed an inflexible work environment, while 12 per cent were seeking a better work-life balance.



## **Summary:**

In this part we have unpacked the drivers of wage inequality and explored the personal, economic and social costs that result from its continued persistence. In the next part we look at multi faceted strategies that can be utilised to tackle the problem and support our Recommendations.

## **PART TWO: ELEMENTS OF AN EQUAL REMUNERATION SYSTEM**

An integrated equal remuneration system is required if progress is to be made. Progress has been very slow since the equal pay case in 1975 and it is apparent that further measures are needed. Improvement is not inevitable and on occasion the gender pay gap widens. Even when measures are being taken to improve equal remuneration, they may be obstructed or limited by other employment relations, human resources and/or management strategies. For example, increasing deregulation and fragmentation of employment relations has, for some years, been antagonistic to improving equal remuneration. Increasingly individualised remuneration strategies and systems are also hostile to equal remuneration. The gender gap in average weekly earnings for full time workers is around 18.9% and has been for many years<sup>4</sup>.

There are significant economic gains to be achieved by improving equal remuneration. Research in the UK shows that if the current gender pay gaps did not exist, Gross Domestic Product would be 3% higher.<sup>5</sup> While there have been substantial improvements since the 1970s in women's human capital, especially education and experience in the workforce, there have not been commensurate increases in women's earnings. The investment in women's education (by women, employers and the state) is under-performing. Women's occupations are often undervalued and underpaid which is likely to affect the level of capital investment in the industries they work in. Women are often employed below their skill level, and/or for fewer hours than they would like, because of insufficiently flexible work arrangements and insufficient support for family care.

Many aspects of employment do not work well for women, including workplace cultures in some job types and levels. All these factors contribute to higher turnover which in turn affects lifetime career progression. The effects of the lack of fit are compounded over a working life. The economic and human costs of this are enormous and continue after working life.

The Sex Discrimination Commissioner said on 22 July 2008:

*The gender gap in retirement savings has the potential to spiral into a huge social and economic problem for the Australian community. Half of all women aged 45 to 59 have less than \$8000 in retirement savings and the average superannuation payout for women is a third of the payout*

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<sup>4</sup> In Australia, the regularly published earnings data is reported as weekly earnings. It is more common internationally to report average (and sometimes median) hourly earnings. The ABS publication that does cover hourly earnings (Employee Earnings and Hours, 6306) is published only every two years and it would be desirable for it to be published at least annually because of the level of detail it provides on distribution and composition of hours and earnings. It would be desirable for both weekly and hourly earnings data to be published regularly, with as much disaggregation of industries and occupations as possible to allow for finer and more timely analysis of trends.

<sup>5</sup> Walby, Sylvia and Olsen, Wendy (Nov 2002) The impact of women's position in the labour market on pay and implications for UK productivity (UK Department of Trade and Industry, Women and Equality Unit). In Australia, employee compensation accounts for 47.66% of GDP (Australian National Accounts, June 2008, 5206) women are 45.3% of the workforce (Labour Force Australia June 2008, 6202) and overall earn 65.6% of men's earnings (Average Weekly Earnings May 2008, 6302). Closing the gender gaps in participation and pay clearly would significantly increase Gross Domestic Product.

*for men. Women spend more time in unpaid work, particularly caring for children. They are also more likely to work part-time than men, leaving them with much less retirement savings. Right now, many women are living their final years in poverty. If we don't act, another generation of women will suffer the same fate.*

The lack of equal remuneration shows a market failure, with labour not attracted to its most productive destination and pricing signals not operating effectively. Women's workforce participation would be greater if earnings were greater and it is observable that participation is higher among women with more education and in better-paying jobs. Attraction and retention are important issues in view of current and worsening skills shortages. The absence of equal remuneration produces an under-functioning labour market and workforce as well as under-functioning organisations. It maintains gender occupational segregation and underpins historic gender roles despite significant evidence that both women and men would like to have better choices available about how paid and unpaid work are shared in households.

## **LEGISLATION: INDUSTRIAL AND OTHER LEGAL INTERVENTION**

Legislation providing the right to equal remuneration for work of equal value, consistent with ILO Convention 100 (Equal Remuneration Convention) and the related Recommendation 100 is required. To give full effect to the ILO instruments, the legislation must provide for collective as well as individual rights and should provide concepts and means of valuing work. It has characteristics of both human rights legislation, and minimum labour standards legislation (including the right of collectively pursuing workers' rights and interests and the right to work free of sex discrimination). From this perspective, it may be appropriate for the equal remuneration jurisdiction to be part of the minimum standards regime.

Whether the equal remuneration legislation is best incorporated in the new workplace relations legislation or in a stand-alone Act can be better considered in the light of the new legislation.

The form of wording to give effect to the proposals made in this submission will also have to be considered further in the light of the new workplace relations legislation. The appropriate location of the equal remuneration jurisdiction and government agency support for it will also need to be considered in light of the institutions established by the new legislation and any changes in the Australian Human Rights Commission, the Sex Discrimination Act, the Equal Opportunity for Women in the Workplace Act and the Equal Opportunity for Women in the Workplace Agency, since these institutions and Acts are part of the equal remuneration system. The roles of the government agencies supporting the equal remuneration legislation should be covered in the legislation. Further submissions should be called for when the shape of the new legislation has been decided.

All legislation, whether it be provided for in the industrial framework or in other legal regimes, should provide rights of equal remuneration for workers in all economic sectors, including the public sector, private sector, and not-for-profit organisations. All types of employees should be covered: full and part time; temporary; casual and seasonal;

contractors who are economically dependent on a particular employer; and employees of contractors contracting with the Federal government.

A broad definition of employment is needed (along the lines of the one in the Equal Opportunity for Women in the Workplace Act<sup>6</sup>) to reflect the diversity of types of employment arrangements, increased use of contractors, and the need to provide the right to equal remuneration throughout the workforce.

Remuneration should be defined to include all elements of work-related rewards, including allowances, superannuation, work-related benefits and bonuses, and performance payments.

Internationally some of the major deficiencies in equal remuneration regimes have been identified as including:

- confining the right to equal remuneration to work that is similar in nature;
- confining the right to employees in certain sectors – mainly the public sector;
- requiring proof that a sex-related disparity in remuneration for work of equal value is caused by sex discrimination;
- limiting the scope of possible claims/comparators to a single enterprise and/or a single employer;
- not providing access to collective claims;
- not providing enforceable rights to obtain the information needed to make the case;
- not providing adequate authority to make binding determinations; and
- back pay and damages regimes that provide disincentives to settle claims.

## **INDUSTRIAL LEGISLATION**

### **Review of Existing Federal Workplace Relations Act**

The legislation should state how equal remuneration claims can be pursued in each type of employment contract (including collective agreements, award, and over-award payments). There should be a requirement for awards to provide for equal remuneration, as was included in the NSW Industrial Relations Act (s.23), supported by a Practice Direction (No.6) from the Industrial Relations Commission (attached).

The legislation should specifically state that it provides a right to equal remuneration for work of equal value and that right covers both work that is the same or similar in nature and work that is not similar in nature but the same or comparable in value. There still are problems relating to equal pay for equal work, including differences in starting rates and/or performance pay for women and men, and the legislation clearly needs to cover that as well as equal pay for work of equal value.

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<sup>6</sup> Which includes both contract of service and contract for service employees.

The legislation should state that making out an equal remuneration claim does not require proof of sex discrimination or the use of comparators but rather relies on providing sufficient evidence that gender has affected the valuation and remuneration of the work, in order for a fresh investigation of the value of the work by a gender-neutral means to be undertaken (see NSW & Qld Principles attached). The value of work should be defined consistently with concepts of work value applied by Australian industrial tribunals, and the Equal Pay Principles, specifically including such components as skill, responsibility, and working conditions.

**Principles.** (attached)

The legislation should be supported by Equal Remuneration Principles along the lines of those developed by the NSW, Tasmanian and Queensland Industrial Relations Commissions. The lack of success in equal remuneration cases in the Federal jurisdiction under the previous legislation demonstrates the need for specification of principles for interpreting and applying the legislative requirements.

The NSW Inquiry also explored a range of threshold issues including definitions of some contested terms, such as “remuneration” and “comparable”. Case law on equal remuneration demonstrates strongly that the greater the clarity about the meaning of relevant terms, the more effective the legislation.

Any defences to an equal remuneration for work of equal value claim should be specified. It should be clear that gender pay inequities cannot be justified on the basis that they arise from collective bargaining or awards. There should be very limited – if any - defences in respect of equal remuneration. The requirement that there should be equal remuneration for men and women workers with the valuing of work not affected by the sex of the people doing it is a human rights matter.

The legislation must provide institutions that can make binding determinations and provide collective and individual remedies, including making orders that change the terms of industrial instruments prospectively (including collective agreements). The lack of access to Full Bench determinations under the equal remuneration provisions of the Workplace Relations Act seriously undermined the usefulness of the provisions. It should be clear that the standard of proof is as for other employment matters. The burden of proof should shift to the employer to show the basis of remuneration once a prima facie case is made that there is not equal remuneration for work of equal value for men and women workers without sex discrimination. Employers are in a position to provide information about the basis of pay, whereas applicants will have limited access to that information. This principle has been upheld in many cases.

There should be access under certain circumstances to damages for economic loss and back pay where the employer has unreasonably delayed or obstructed proceedings and/or has not made good faith efforts to investigate and resolve the matter. An example of employer obstruction of an equal remuneration case was the long-running HPM case, in which the employer dismissed the male comparators and caused extensive delays.

However, access to back pay and damages should be limited, in view of the experience in jurisdictions that do provide those remedies, that cases become protracted and expensive

and incentives favour further delay in reaching and implementing solutions, especially where the costs involved are high and there is the possibility that the proceedings may cease if the other party cannot afford to continue the case. At the same time, the lack of back pay and damages can also influence employers to take no action until forced to do so, and to extend proceedings unnecessarily to delay the payment of any increases.

The legislation should include the right to request information about the remuneration of specified workers or groups of workers, with employers not to unreasonably deny the request and with a right to challenge the employer's refusal to provide the information. There should be provisions about discovery of information about potential comparators for both individual and collective claims together with provisions for protecting personal data and privacy of individuals.

It is particularly important that cross-enterprise claims/comparators can be pursued. since many organisations have been structured around one or a few activities and have a single or a few occupations. In many jurisdictions, cases cannot be pursued because of the absence of comparators employed by the same employer and/or in the same enterprise. In Australia, the award system has allowed cross-enterprise and cross-employer claims and this has contributed to Australia's historically good performance on equal remuneration.

The Award Modernisation Process and its commitment to equal remuneration and attention to provisions for the wages of the low paid, as contained in Section 576B(2) of the award modernisation legislation, must be applied. The use of award making in both State and Federal tribunals has been the most effective means of spreading equal pay.

Equal remuneration for men and women workers for work of equal value without sex discrimination, as required by ILO 100, is properly understood as a minimum standard, requiring that evaluation of work is free of sex discrimination. This understanding of the Convention was fully explored in the NSW Pay Equity Inquiry. Therefore, any body dealing with minimum standards should also be able to deal with complaints that because the evaluation of work is affected by sex discrimination, there is not equal pay for work of equal value for men and women, and provide remedies including requiring that different methods of evaluating work are implemented.

There is also a consistent relationship between the level of the minimum wage and the gender wage gap. A strong and enforceable minimum rate is important in lifting women from low wages. We note the decline of the minimum rate as a proportion of earnings and support the setting of minimum rates by an independent body that allows for submissions, hearing of evidence, and open and transparent decision making. We see the return of wage setting to the AIRC as a positive step.

## **Collective Bargaining**

The International Labour Organisation Convention recommendations 86, 98 and 163 set out rights and obligations for collective bargaining. Recommendation 163 states free choice of bargaining at 'any level whatsoever'. Workers must have the right to bargain agreements at national, industry, occupational or workplace levels. As already stated, the level at which wages are determined has been important in determining pay equity

outcomes. Australia's system of compulsory calling parties to conciliate and bargain has positive outcomes for weaker groups in the bargaining process (Whitehouse, Hammond and Harbridge, Gregory).

Collective bargaining can be a pay equity strategy, especially where the bargaining is for a particular occupation (for example: nursing). It can provide an opportunity to negotiate about conducting equal remuneration reviews and implementing pay equity plans. Pay equity is generally better in more collective employment relations environments. However, where bargaining covers a range of occupations, targeting a particular group can be problematic for unions and can be seen as being at odds with a strategy to maximise collective benefits. Collective bargaining is not likely to be an effective strategy for occupations with low unionisation and/or little industrial strength, and/or where unions have few women and/or are not supportive of pay equity for women. Pay equity can be weighed up and/or traded off against other benefits sought in bargaining. For collective bargaining to be successful in addressing pay equity, rules governing bargaining in the industrial system must include rights to call parties to negotiate, conciliate and, in the event of failure to agree, for Fair Work Australia to arbitrate on agreements and make awards on an occupational, industry and workplace level.

While collective bargaining may not always be an effective means of progressing pay equity, it should not be permitted to be at odds with the fundamental legislated human right to equal remuneration for work of equal value without sex discrimination.

Guidance should be developed for industrial parties to use in achieving equal remuneration through collective bargaining (and developing and maintaining modern awards).

Government has an important role to play in setting and implementing legislation, including through investigation, adjudication and enforcement. Information, technical advice and support for employers, unions and citizens is another important function of government. Mediation and conciliation services should also be provided to assist in resolving matters outside formal legal proceedings.

### **Other Legal Mechanisms**

Complaints-based legislative regimes alone have not proven to be an effective means of achieving equal remuneration. Cases are costly, complicated and long-running and the required expertise and resources scarce. The number of cases that would be needed would be prohibitive.

Typically, around 20% of the gender pay gap can be attributed to the way work is valued: to gender-related undervaluation. That part of the gender pay gap is addressed by equal remuneration provisions and processes. Addressing the whole of the gender pay gap requires addressing employment equity issues, including the level and types of jobs women are in and workplace cultures that affect women's opportunities to participate fully, and their workplace experiences. The Human Rights and Equal Opportunity Commission can consider individual and group complaints of direct and indirect sex discrimination including

pregnancy discrimination, marital status discrimination and sexual harassment and the Federal Court can deal with cases relating to those forms of discrimination.

The Equal Opportunity for Women in the Workplace Act requires certain employers (higher education institutions that are employers, and non-government employers of 100 or more employees in Australia) to develop and implement equal opportunity for women in the workplace programs to ensure that appropriate action is taken to eliminate all forms of discrimination by the relevant employer and to ensure that measures are taken by the relevant employer to contribute to the achievement of equal opportunity for women in relation to employment matters. The Act specifies employment matters as including:

- the recruitment procedure, and selection criteria, for appointment or engagement of persons as employees;
- the promotion, transfer and termination of employment of employees;
- training and development for employees;
- work organisation;
- conditions of service of employees;
- arrangements for dealing with sex-based harassment of women in the workplace;
- arrangements for dealing with pregnant or potentially pregnant employees and employees who are breastfeeding their children.

Employers are required to confer responsibility for the program on a person with sufficient authority or status to develop and implement the program and to consult with employees or their representatives. The employer must prepare a workforce profile and then prepare an analysis of issues relating to the employment matters that the employer would need to address to achieve equal opportunity for women in the employer's workplace. The analysis must cover all the employment matters, while only some matters may be identified as being of sufficiently high priority for action<sup>7</sup>. The program must provide for actions to be undertaken on the priority issues identified in the analysis and evaluation of the effectiveness of the actions in achieving equal opportunity for women in the employer's workforce. In 2006/07, employee gender data was available for only 2258 (of 2482) reporting organisations. It is unclear how the 224 reporting organisations for which employee gender data was not available met their requirements.

The employer must have a workplace program for each reporting period (each year) and must prepare a public report about the outcomes of the employer's workplace program. The public report must include the workforce profile, the employer's analysis of the equal employment opportunity for women issues in the employer's workplace, the actions taken by the employer to address the priority issues and the actions the employer plans to take in the next reporting period to address the employment matters the employer would need to address to achieve equal opportunity for women in the employer's workplace. The employer may report on evaluation of the effectiveness of the actions

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<sup>7</sup> Examination of the public reports shows that reports often say very little about the analysis that was done of some, all, or any employment matters, or articulate the basis of prioritisation or the reasons that action will not be undertaken on some, all or any of the employment matters analysed.



undertaken in the public report or otherwise must provide a confidential report on the evaluation.

The employer must provide a public report each year unless the Agency has waived that employer's reporting requirement. Reporting is to become biennial from 2009 for most organisations. Before waiving the requirements, the Agency must be satisfied that the employer has taken all reasonably practicable measures to address the issues relating to employment matters affecting equal opportunity for women in the employer's workplace. The Act provides for regulations to be made prescribing the matters to be taken into account by the Agency when determining whether all reasonably practicable steps have been taken. To date no such regulations have been made.

The Agency may request further information about the workplace program or about the report, and may name a relevant employer who fails to provide a report or further information requested, in a report to the Minister, to be tabled in Parliament.

The waiving provisions have been used extensively since they were introduced in 1999, to waive the reporting requirements for one or more years for some employers. In 2006/07, 106 employers were waived (88% of applicants). 2482 organisations were due to report in 2007 and 8.1% of reporting organisations had been officially waived in a previous year.

The principal sanction for employers not having sufficiently robust workplace programs and/or not reporting adequately on them is being named in a report to the Minister and to Parliament. Non-compliant organisations are ineligible to tender for government contracts and for industry assistance. In 2006/07 13 organisations were named as non-compliant, eight of them as non-compliant for three or more years. Only organisations that did not report were named as non-compliant and no organisations were named as non-compliant because their reports or programs did not meet the requirements and objectives of the Act.

There may also be a possible legal action where a person or person has been disadvantaged by an employer's failure to develop and implement an adequate workplace program. For example, a person or persons can demonstrate in a sex discrimination case that the employer's employment practices have disadvantaged them and that those employment practices should have been or had been identified, and addressed, through a workplace program, could seek damages for the failure to develop and implement a workplace program, in addition to the damages sought in relation to the sex discrimination. In some ways, this is similar to the occupational health and safety regime where an employer's failure to undertake occupational health and safety programs can be relevant to an employee's claim for damages or compensation.

There are six criteria and, from 2007, six prerequisites for the EOWA's list of Employer of Choice for Women. The criteria are that the organisation:

- has policies on employment matters that support women across the organisation;
- has effective and transparent processes across employment matters;
- has strategies in place that support a commitment to fully utilising and developing its people, including women;

- educates its employees, including supervisors and managers, on their rights and obligations regarding sex-based harassment;
- has an inclusive organisational culture that is championed by the CEO, driven by senior executives and holds line managers accountable; and
- delivers improved outcomes for women and the business.

The six prerequisites from 2007 are:

- equal opportunity for women is a standing agenda item on a committee chaired by the CEO or his/her direct report;
- female managers can work part time;
- paid maternity leave is available – at least six weeks paid leave after 12 months' service;
- sex-based harassment education is conducted at induction for all staff including management, contract staff and casual staff; plus refresher education or update for all staff including management, contract staff and casual staff at least every two years;
- the pay equity gap is less than the national gender pay gap (currently 17%) and the organisation's overall gender pay gap is less than the organisation's industry average; and
- at least 27% of managers are women or the organisation's percentage of female managers is greater than the industry-sector average.

There were 131 organisations on the Employer of Choice for Women list in 2007. Standards requiring that Employers of Choice be no worse than national or industry averages in effect frame the status quo as exemplary, although the status quo is far from equal remuneration and equal employment opportunity.

The level and content of reporting is inadequate and the quality of workplace programs as reported to the Agency vary greatly, with some programs addressing few of the employment matters and/or not reporting appropriate initiatives to address matters identified. It is unclear from some workforce profiles whether their coverage does cover all the employees the Act covers, including contractors. From reviewing the published reports, it does seem that some employers assessed as complying with the Act would struggle to demonstrate how their processes, programs and reports do meet the Act's objectives for achieving equal employment opportunities for women, and the reporting requirements of the Act. It would seem that the Agency falls short in the administration of reporting requirements.

Development of regulations under the Act defining what "all reasonably practicable steps" to address any issues affecting equal opportunity for women means, would strengthen the Act by articulating expectations and providing guidance for employers and providing a transparent and robust standard for assessment of reports and evaluations and for requests for waiving.

Similarly, there would be value in developing and publishing minimum standards for compliance with each of the Act's requirements. The development of these standards and/or regulations would best be done by a robust stakeholder engagement process.

Publishing clear standards for compliance, for the level and type of information required in reports, for waiving, and EOWA reporting on its decisions against those standards, would provide a strong framework for accountability of employers for the quality of their programs and reports. The standards and regulations would complement the guidance, resources and education services the Agency currently provides. The observable very high level of variation in quality of reports and programs points to the need for further definition of what is expected and required so there is a clear basis of accountability for employers and a clear standard for the Agency's decisions.

Further consideration should be given to extending the coverage of the Act to public sector employers. Differences between public and private sector employment are significantly less than when the Affirmative Action Act was introduced. The systems for monitoring and reporting on equal employment opportunity in the public sector have changed greatly, as have the requirements. There would be considerable value in sharing information and resources and developing networks and capacity across the public and private sectors.

The legislation, such as Equal Opportunity for Women in the Workplace Act, should require that employers undertake reviews on equal remuneration for work of equal value, with the reviews to be carried out progressively over the next five years commencing with the public sector and the largest employers. The legislation should require that pay equity plans are developed and implemented, based on the review carried out. The legislation should require that the reviews are carried out in good faith by all participants, with a disputes process for complaints.

Experience in the UK has been that, despite significant investment by the Equal Opportunities Commission in education, tools and resources, most employers have not done and do not intend to do equal pay reviews on a voluntary basis. In Australia, the legal requirement to report to the then Affirmative Action Agency was provided, following the assessment after the pilot program and in subsequent reviews, that many employers would not report without a legal requirement to do so. Further, many reports to the Agency are inadequate and contain very little information. It would appear that Agency review of these reports has been somewhat lax and has not given full strength to the legislation. While the Equal Opportunity for Women in the Workplace Agency has developed an equal pay review tool, available for employers to use since 2004, there is little evidence that employers have been conducting equal pay reviews on a voluntary basis. It is highly unlikely that there would be any significant take-up of equal remuneration reviews in Australia without legislated requirements.

It may be more appropriate to establish various requirements for different sizes of organisations than to set a particular threshold for coverage by the requirement to review equal remuneration, since the right to equal remuneration applies to every employee.

The legislation should enable industry and sector based approaches as well as organisation based processes. There may be considerable efficiencies in sector and sub-sector approaches and it is often the case that particular pay equity problems are characteristic

of particular sectors, sub-sectors and industries. The larger-scale investigations could then be implemented in appropriate ways at various times by the various employers, including through award and collective agreement.

Considerable progress has been made in the UK in improving gender equity in the public sector through large-scale gender-inclusive job evaluation projects, in local government, the National Health Service, the Civil Service, and higher and further education. When these exercises are complete some 20% of working women in the UK will have been covered, which will in turn affect markets where occupations are in both the private and public sectors. While there have been equal pay cases about how these schemes have been implemented, the schemes have provided a means for thorough and integrated examination of a very large number of both male and female dominated, white and blue collar, jobs.

Sector and industry and industry sub-sector approaches have also been used in Canada and in New Zealand, providing significant economies in transaction costs, while still allowing account to be taken of wider and organisation specific factors and solutions.

In the UK, there are also various requirements for equity issues to be addressed as part of public sector procurement, including local government. Government use of its substantial purchasing power in support of its economic and social goals provides another means of promoting equity in the private sector.

The proposed requirement to undertake pay equity reviews should be supported by a government policy that those who do not undertake and document the reviews as required are ineligible for government contracts or industry assistance.

These reviews should be required to be undertaken jointly by employers, employees and unions, where present. The reviews should be required to be undertaken at least every five years.

Requirements should include keeping records of reviews and pay equity plans and providing them to a labour inspector upon issue of a notice. This would be analogous to requirements to keep time and wages records and to document that required occupational health and safety practices have been carried out. Sanctions for not doing or documenting reviews should be comparable to those for not keeping other required records relating to employment requirements. There should be a reporting process to the Minister and to Parliament, along the same lines as applies for the Equal Opportunity for Women in the Workplace Act. Reports of equal remuneration reviews should be admissible in sex discrimination or equal remuneration cases.

Labour inspectors could play a role in investigating complaints and reviewing equal remuneration compliance. The processes for acting further on problems identified would be the same as for other breaches of the Act. Provisions should be made for periodic evaluation of a sample of the review reports and pay equity plans, supplemented by other appropriate research and investigations.

## **Code Of Practice**

The legislation should be supported by a Code of Practice providing guidance on how equal remuneration can be investigated and implemented. The Code of Practice would provide definitions of central concepts and technical advice. An example of a Code of Practice on equal pay is attached (the UK Equal Opportunity Commission's Code). The Code was brought into force on 26 March 1997. It sets out the requirements of the law, its implications for employers, the process of an equal pay review and the identification of discriminatory elements in pay systems. Guidance is provided on drawing up an equal pay policy, and a suggested policy is set out as an annex. The Code's provisions are admissible in evidence before an employment tribunal.

Codes of practice articulate expectations about the meaning of legislated requirements and provide advice on means by which they can be met. They can provide useful guidance for employers and for those determining matters under legislation as well as having educational value more broadly. They have proven very effective in the occupational health and safety field.

## **Tools**

A range of tools and guides for assessing the value of work in gender-neutral ways should be developed to support the legislation and the Code and assist in carrying out the required equal remuneration reviews. The tools and guidelines should cover a range of methods that commonly contribute to job sizing, job ranking and remuneration setting, including job evaluation, competency assessment, and work value approaches used by industrial tribunals.

The experience in the Pay Equity Inquiries in various jurisdictions in Australia and in pay equity research has shown that better understanding of what contributes to and what obstructs equal remuneration is needed more widely among employers, managers, HR staff, and union officials, delegates and members. The technical expertise is not widespread. It is important that the necessary expertise is captured and built on so it can be widely distributed and become embedded in workplace practices and employment relations, if sustainable change is to be achieved.

The use of particular tools and techniques should not be mandated since there are many ways of approaching pay equity.

Effective development, promotion and support of the tools will require a government-based body with the appropriate technical expertise. That body should work to develop an effective network of practitioners (in the private market, consultancies, unions, and non-government organisations) to support equal remuneration reviews and other equal remuneration processes. Detailed case studies demonstrating the use of particular techniques and a wide range of events, courses, templates, publications and resources to build understanding of issues and solutions will all be useful ways of delivering knowledge.

The development of standards and tools should draw on experience of the use of existing resources, including those from various jurisdictions in Australia, the United Kingdom, Canada and New Zealand<sup>8</sup>.

### **Expert Practitioners and Practitioner Networks**

Progress towards equal remuneration requires expert practitioners and practitioner networks: both advocates to progress claims and practitioners proficient in investigative proactive processes. They could include mediators, advocates and expert investigators based in employer or union organisations, funded by government. Funding to support participation in investigating pay equity is required for reasonably expeditious progress to be made. Funding to support pay equity investigations has been provided by the governments of Queensland, Western Australia and Victoria.

The lack of capability in identifying and addressing equal remuneration can be a major constraint on progressing implementation. There has been little experience in pursuing equal remuneration cases and equal remuneration issues have rarely been investigated and addressed in workplace programs reported under the Equal Opportunity for Women in the Workplace Act.

Practitioners, employers and unions will all need up-skilling on equal remuneration. Networks of those involved will help to build a community of practice and contribute to collaborative problem solving and resource sharing. In the UK, employer networks have supported equal pay reviews. In New Zealand, practitioner networks contribute significantly to capacity building. A practitioner network could be associated with existing equal employment opportunity/diversity and/or HR networks.

### **Workplace Based**

If sustainable change is to be achieved, it is important that the proactive approach developed be workplace-based and that over time better understanding of, and increasing commitment to, equal remuneration is achieved by employers and unions. Employer/union partnerships have significantly contributed to improvements in occupational health and safety, and participation in joint processes have been largely positive activities.

Training of participants has contributed to broader education and training on the issues. Joint training provided by a government agency contributes to parties developing a common approach from a shared understanding of the issues and review processes. Training is critically important because many participants will have little or no specific knowledge of equal remuneration issues and some will have little knowledge of human resources and management issues and processes.

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<sup>8</sup> The New Zealand pay and employment equity tools and resources include the pay and reemployment equity review process, the Equitable Job Evaluation System, the Gender-inclusive Job Evaluation Standard, and the Spotlight on Service Sector Skills tool. Some work has been undertaken in West Australia towards adoption of a gender-inclusive job evaluation standard in Australia.

Eliminating systemic discrimination requires changing attitudes and habits, and broad-based participation. Employee participation also contributes to organisational capacity building. An important aspect of the involvement of human resources management practitioners in review processes is building their understanding of how gender bias can arise in human resources management, including in job evaluation, performance management, and recruitment and promotion.

Approaches relying on intensive government supervision of mandated review and reporting requirements have proven expensive and have not achieved their objectives. For example, in Canada a major Taskforce review of approaches in the various Canadian jurisdictions found that despite highly specified regulatory requirements, supervisory bodies and inspection standards and processes, progress has been slow and expensive<sup>9</sup>.

## **Roles of Government**

In addition to the technical support in tools development and training and supporting the operation of the equal remuneration jurisdiction, government will need a monitoring, reporting and evaluating role to maintain momentum, fine-tune implementation, and provide accountability for sustained progress. It will be important for sustained progress that the legislation provides for maintenance and follow-up of implementation of actions identified in equal remuneration reviews and equal opportunity reports.

Government policy commitment is critical for achieving the objectives, not least because government will need to ensure that equal remuneration is achieved for its own employees. Pay equity problems can arise in the public sector where governments use their market power to hold down rates in occupations that are largely based in the public sector.

Government leadership in implementation is important and should be articulated in a commitment that public sector organisations will undertake equal remuneration reviews in the next three years. Government leadership can make a significant contribution to engaging private sector employers.

Policy statements and guidance will be needed, articulating the relationships between equal remuneration and other factors and processes affecting achievement of equal remuneration, including collective bargaining policies and strategies and human resources and management policies and strategies, and policies and processes for setting minimum wages. These policies should articulate the checks and measures that will ensure consistency with equal remuneration commitments.

Progress can be inhibited if these other processes operate in ways that are inconsistent with equal remuneration. For example, in the UK implementation of the more gender-neutral job evaluation schemes in the National Health Service and in local government has apparently been accompanied by collective bargaining that has limited the progress towards pay equity, and equal pay cases are currently underway to seek remedies.

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<sup>9</sup> Pay Equity Task Force, *Pay Equity: A New Approach to a Fundamental Right*, Minister of Justice and Attorney General of Canada and the Minister of Labour, 2004.

## CONCLUSION

We began our Submission with Recommendations that we feel will advance pay equity.

Part One of the Submission has examined the problem that pay equity holds for women and for Australia's future economic prosperity. The waste of potential resources at both a personal level, and for the social and economic well being of society. We pointed out that the major developments in addressing wage discrimination have come through decisions from industrial tribunals and that legislative intervention is required if we are to make a serious attempt to end pay inequality.

In Part Two we reiterated the importance of the industrial relations system and legislation in improving wage equality and explored the elements we feel are required to build an integrated framework. We considered the industrial relations system, the complaints based system and reviewed the role and function of the Equal Opportunity for Women in the Workplace Act. We feel that this discussion supports the recommendations we made in the first part of this Submission.

Pay equity requires both individual and collective approaches, including capacity to deal with individual and group complaints, provide workplace programs to improve employment equity, and contribute to wage determination. The analysis of the dynamics of the gender pay gap that has been provided in this submission shows how pay equity requires the complementary contributions of the human rights jurisdiction, equal opportunities jurisdiction and the industrial and employment relations jurisdiction. Each jurisdiction has its own particular constitutional basis (and limitations) while all have some common ground in ILO Conventions 111 and 100. The jurisdictions also vary in their power and sanctions.

If pay equity issues arises for an individual or group because of sex discrimination, the human rights jurisdiction may prove the most effective for investigating a complaint, which may subsequently be considered by the Federal Magistrates Court, and could be the subject of decisions and damages. However, discrimination under the Sex Discrimination Act would need to be proved and the remedy can only apply to the subjects of the complaint and cannot be prospective. Proof of discrimination is fundamental in the human rights jurisdiction and a critical element of proving discrimination is demonstrating disadvantage for a person or people with the characteristic the Act covers, compared to a person or people without the characteristic. This can often be difficult in a highly gender segregated workforce. Not all pay equity issues can be tracked to provable sex discrimination.

For a pay issue relating to the process of wage determination, the employment and industrial relations jurisdictions will often be the only avenue for a collective and prospective solution. This will especially be the case where the issue arises because of how gender has affected wage determination in female-dominated occupations in highly gender-segregated labour markets, and the reasons for past decisions will not have been documented. Damages are not available.



Neither the human rights nor the employment and industrial jurisdictions deal with work-based programmes to improve equal employment opportunities for the future, addressing those aspects of the gender pay gap that are not directly related to wage fixing processes but do affect women's earnings, particular by affecting the types and levels of jobs women hold.

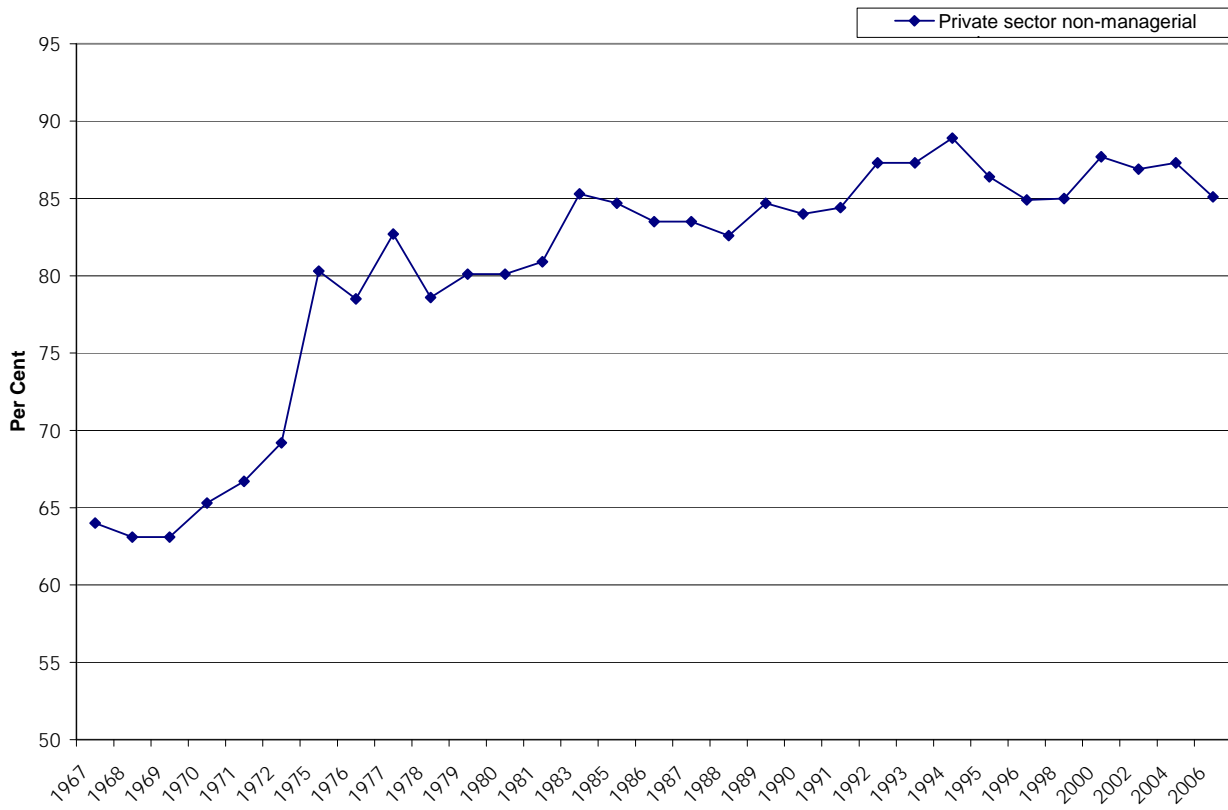
The creation of a new national industrial relations system by the newly elected Labor government provides an excellent opportunity to reinvigorate attempts to achieve a fairer wage outcome for women. We need to marshal various other means, such as legislation, institutional arrangements, policies and programs that can produce the best outcome for particular groups of women workers.

We need to create a modern and secure award system, strengthen the equal remuneration provisions in the Federal Workplace Relations Act and provide a robust minimum wage system.

We have seen wins and losses for the cause of pay equity in the industrial relations system over a long period, and we are keen to share the lessons learnt in this campaign.

## Attachment 1

### Gender Pay Equity Ratios 1967 - 2006 (Hourly Rates, Total Earnings)



## Appendix One

**New South Wales Equal Remuneration Principle (C2000-52)** provides a useful framework for assessing whether an award provides equal remuneration for men and women workers for work of comparable value. The Principle is set out below.

### Equal Remuneration and Other Conditions

- (a) Claims may be made in accordance with the requirements of this principle for an alteration in wage rates or other conditions of employment on the basis that the work, skill and responsibility required or the conditions under which the work is performed have been undervalued on a gender basis.
- (b) The assessment of the work, skill and responsibility required under this principle is to be approached on a gender neutral basis and in the absence of assumptions based on gender.
- (c) Where the undervaluation is sought to be demonstrated by reference to any comparator awards or classifications, the assessment is not to have regard to factors incorporated in the rates of such other awards which do not reflect the value of work, such as labour market attraction or retention rates or productivity factors.
- (d) The application of any formula, which is inconsistent with a proper consideration of the value of the work performed, is inappropriate to the implementation of this principle.
- (e) The assessment of wage rates and other conditions of employment under this principle is to have regard to the history of the award concerned.
- (f) Any change in wage relativities which may result from any adjustments under this principle, not only within the award in question but also against external classifications to which the award structure is related, must occur in such a way as to ensure there is no likelihood of wage leapfrogging arising out of changes in relative positions.
- (g) In applying this principle, the Commission will ensure that any alteration to wage relativities is based upon the work, skill and responsibility required, including the conditions under which the work is performed.
- (h) Where the requirements of this principle have been satisfied, an assessment shall be made as to how the undervaluation should be addressed in money terms or by other changes in conditions of employment, such as reclassification of the work, establishment of new career paths or changes in incremental scales. Such assessments will reflect the wages and conditions of employment previously fixed for the work and the nature and extent of the undervaluation established.

- (i) Any changes made to the award as the result of this assessment may be phased in and any increase in wages may be absorbed in individual employees' over-award payments.
- (j) Care should be taken to ensure that work, skill and responsibility which have been taken into account in any previous work value adjustments or structural efficiency exercises are not again considered under this principle, except to the extent of any undervaluation established.
- (k) Where undervaluation is established only in respect of some persons covered by a particular classification, the undervaluation may be addressed by the creation of a new classification and not by increasing the rates for the classification as a whole.
- (l) The expression 'the conditions under which the work is performed' has the same meaning as in Principle 6, Work Value Change.
- (m) The Commission will guard against contrived classification and over classification of jobs. It will also consider:
  - (i) the state of the economy of New South Wales and the likely effect of its decision on the economy;
  - (ii) the likely effect of its decision on the industry and/or the employers affected by the decision; and
- (n) Claims under this principle will be processed before a Full Bench of the Commission, unless otherwise allocated by the President.
- (o) Equal remuneration shall not be achieved by reducing any current wage rates or other conditions of employment.

## Appendix Two

The President of the Industrial Relations Commission also issued a Practice Direction as to how the Commission would satisfy its obligation under s23 of the Industrial Relations Act that an award the Commission is asked to make meets the equal remuneration requirement. (F. L Wright, J. President 14 July 2000)

### INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

#### PRACTICE DIRECTION No 6

Pursuant to Rule 89 of the Industrial Relations Commission Rules 1996

#### Applications for Consent Awards having regard to section 23 of the *Industrial Relations Act 1996*

1. The purpose of this Practice Direction is to provide an appropriate procedure for the making of consent awards having regard to:
  - (a) the requirements of section 23 of the *Industrial Relations Act 1996*, and
  - (b) the decision of the Full Bench of the Industrial Relations Commission of 30 June 2000 in *Re Equal Remuneration Principle* [2000] NSWIRComm 113.
2. This Practice Direction will become effective 14 days after it is published in the New South Wales Industrial Gazette.
3. In the Full Bench decision in *Re: Equal Remuneration Principle*, the Commission said at 155:

"Operation of s23 of the Act

Finally, and having in mind the cases advanced by the parties as to the proper construction of the Act which we have dealt with, we announce that a Practice Direction *will* in due course, issue to require parties seeking a consent award to file with the application an affidavit stating the basis upon which it is contended that the proposed award provides for equal remuneration and other conditions of employment for men and women doing work of equal or comparable value. This material will form tile evidentiary basis upon which the Commission will in future base its consideration of the requirements of s23 of the Act."
4. When application is made for a consent award, the parties shall file an affidavit setting out the basis upon which it is contended that the proposed award provides for equal remuneration and other conditions of employment for men and women doing work of equal or comparable value.
5. The affidavit referred to in paragraph 4 of this Practice Direction will usually form the evidentiary basis upon which the Commission will consider the requirements of s23 of the *Industrial Relations Act 1996*.

6. In the absence of agreement between the parties, the obligation to file the affidavit referred to in paragraph 4 of this Practice Direction will be the responsibility of the applicant.
7. The affidavit is to be filed either with the application for the consent award or within seven (7) days of the date on which the application for the consent award is filed.

## **Appendix Three**

### **QUEENSLAND INDUSTRIAL RELATIONS COMMISSION**

Industrial Relations Act 1999 – s. 288 – *application for statement of policy*

**The Queensland Council of Unions and Others AND Queensland Chamber of  
Commerce and Industry Limited, Industrial Organisation of Employers and  
Others (No. B450 of 2002)**

#### **EQUAL REMUNERATION PRINCIPLE**

VICE PRESIDENT LINNANE

COMMISSIONER SWAN

COMMISSIONER BROWN

29 April 2002

#### **STATEMENT OF POLICY**

This matter coming on for hearing before the Full Bench of the Commission on 22 March, 16 April and 24 April 2002, the Commission declares by consent as follows:–

#### **EQUAL REMUNERATION PRINCIPLE**

1. This principle applies when the Commission:
  - (a) makes, amends or reviews awards;
  - (b) makes orders under Chapter 2 Part 5 of the *Industrial Relations Act 1999*;
  - (c) arbitrates industrial disputes about equal remuneration; or
  - (d) values or assesses the work of employees in “female” industries, occupations or callings.
2. In assessing the value of work, the Commission is required to examine the nature of work, skill and responsibility required and the conditions under which work is performed as well as other relevant work features. The expression “conditions under which work is performed” has the same meaning as in Principle 7 “Work Value Changes” in the Statement of Policy regarding Making and Amending Awards.
3. The assessment is to be transparent, objective, non-discriminatory and free of assumptions based on gender.
4. The purpose of the assessment is to ascertain the current value of work. Changes in work value do not have to be demonstrated.
5. Prior work value assessments or the application of previous wage principles cannot be assumed to have been free of assumptions based on gender.

6. 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:
  - (a) whether there has been some characterisation or labelling of the work as “female”;
  - (b) whether there has been some underrating or undervaluation of the skills of female employees;
  - (c) whether remuneration in an industry or occupation has been undervalued as a result of occupational segregation or segmentation;
  - (d) whether there are features of 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 agreements and other considerations of that type; or
  - (e) 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.
7. Gender discrimination is not required to be shown to establish undervaluation of work.
8. Comparisons within and between occupations and industries are not required in order to establish undervaluation of work on a gender basis.
9. Such comparisons may be used for guidance in ascertaining appropriate remuneration. The proper basis for comparison is not restricted to similar work.
10. Where the principle has been satisfied, an assessment will be made as to how equal remuneration is to be achieved. Outcomes may include but are not limited to the reclassification of work, the establishment of new career paths, changes to incremental scales, wage increases, the establishment of new allowances and the reassessment of definitions and descriptions of work to properly reflect the value of the work.
11. There will be no wage leapfrogging as a result of any changes in wage relativities arising from any adjustments under this principle.
12. The Commission will guard against contrived classifications and over classification of jobs.
13. The Commission may determine in each case whether any increases in wages will be absorbed into overaward payments.



14. Equal remuneration will not be achieved by reducing current wage rates or other conditions of employment.
15. The Commission may decide to phase in any decision arising from this principle. Any affected employer may apply to have any decision phased in. The merit of such application will be determined in the light of the particular circumstances of each case and any material relating thereto will be rigorously tested.
16. Claims brought under this principle will be considered on a case by case basis.
17. This Statement of Policy will operate from 1 May 2002.

Dated 29 April 2002.

D.M. LINNANE, Vice President.

D.A. SWAN, Commissioner.

D.K. BROWN, Commissioner.

Appearances:–

Ms S. Herbert for the Queensland Council of Unions.

Ms Y. D'Ath for The Australian Workers' Union of Employees, Queensland.

Ms V. Semple for the Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch, Union of Employees.

Ms F. Bucknall for the Department of Industrial Relations.

Mr M. Smith and Mr P. Ryan for the Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers.

Ms S. Davis and J. McDonald for the Australian Industry Group, Industrial Organisation of Employers (Queensland).

Ms L. Vanderstoep for the Retailers' Association of Queensland Limited, Union of Employers.

Mr K. Law for The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers.

Mr R. Beer for the Local Government Association of Queensland (Incorporated).

Mr C. Lentini for the Queensland Hotels Association, Union of Employers.

Ms V. Lincoln for the Queensland Country Press Association – Union of Employers.

Mr G. Muir and Mr M. Patti of Employer Services Pty Ltd for the Private Hospitals Association of Queensland Incorporated, the Royal Queensland Bowls Association, the Australian Dental Association (Queensland Branch) Union of Employers, the Child Care Industry Association of Queensland Incorporated and the Queensland Master Hairdressers' Industrial Union of Employers.

Released: 30 April 2002

## Appendix Four

### ADDITIONAL RESEARCH FOR THE BENEFIT OF THE INQUIRY

#### Pay and Employment Equity and Productivity

##### Note number of drafts/outlines of papers on productivity ...

Cabinet Economic Development Committee (Aug 2004), Office of Minister of Social Services and Employment: *Labour utilisation and economic growth*.

Unique issues facing female non-participants: women make up the majority of people not participating in the LF and while our overall LF participation rate compares favourably with other OECD countries, female participation rate is less favourable. NZ is also one of a group of OECD countries with below-average public childcare spending and above average part-time female employment.

Identifies two key groups not participating: 25-44 years, child-rearing cohort; and 45-64 group, mature women.

OECD NZ Country Report 2003: 'the ageing of the population is projected to lower participation rates in NZ by more than one percentage point by the end of the decade and by four percentage points by 2020. Furthermore, the impact on the economy is likely to be compounded by a corresponding increase in economic dependency ratios.

One type of under-employment is working people who would prefer to work more hours. Sept 2003, 23% of women working p/t [73,200] and 27% of men [32,600] wanted more hours.

OECD has identified raising productivity and participation rates as the two key levers for achieving the NZ Govt. goal of 'returning GDP per person to the top half of the OECD'.

A country's output is made up of the number of people working, the hours that they work and their productivity while they are working.

Dwyer, Maire [April 2006 draft], *A Report on the Economic Rationales for Narrowing the Gender Pay Gap*.

DoL [2005?] Cabinet paper: *Workplace productivity working group report: approval for release of report and govt response*.

Two sources of GDP per capita growth: labour utilisation [number of people working and hours worked] and labour productivity [output produced per worker per hour]. Simply: the total number of hours worked in the economy and the amount produced in each of those hours. Most successful countries have both high utilisation rates and high labour productivity.

NZ already has high levels of labour utilisation, meaning that increasing labour productivity is a key determinant of economic growth.

In practice, improving productivity allows workers to receive higher wages and firms to make profits without risking an increase in inflation. The productivity of a firm reflects how it brings together people, skills, technology, capital and other inputs to produce the goods and services it sells.

From 1987 until recently, NZ's average labour productivity growth was consistently less than that of Australia. However, in the period 1997-02, NZ's rate of increase was similar to that of Australia at 1.7% pa. Both NZ's and Australia's labour productivity growth are still lower than growth in the UK and France.

DoL [2004/5]? International literature review on the business case for work life balance.

Reviews international literature.

Benefits are noted below [page XXX]

Equal Opportunities Commission, UK [July 2005], EOC Action Plan for Government.

Women make up nearly half of Britain's workforce and the proportion is growing. Sex inequality is damaging productivity. Women's skills are under-used and too many do jobs that are below their capabilities. More than three in four part-time workers are women and more than half of part-time workers are in jobs that they feel fail to capitalise on their qualifications, skills and previous management experience.

Many women cannot find higher skilled work that is compatible with family responsibilities, work which could contribute more to economic productivity as a nation.

EO Commission: 2005, [Adams, Loran, Carter, Katie, Schafer, Stefan IFF Research] Equal Pay Reviews Survey 2005.

EO Commission, UK, (Oct 2004), Britain's competitive edge: Women: Unlocking the potential.

Women working full-time earn 18% less per hour than men. Women working part-time earn \$40 less per hour – gap has changed little in 25 years. Recent women graduates earn 15% less than men with same qualifications within five years. [NZ COMPARISONS]

In comparison with high skill, high wage economies, UK productivity low. USA output per hour 39% higher than UK, France and Germany 22% and 19% higher. UK higher wages compared to emerging competitors, China, India. Can't rival low wage economies. [NZ COMPARISON?]

Britain's future success – lies in quality of its workforce – best people, high quality skills, in the right place at the right time.

Women...nearly half of UK workforce and proportion is growing. 8 out of 10 new job vacancies set to be filled by women. [NZ COMPARISON?]

UK – highest workforce participation for women in Europe, except for Scandinavia. Women excelling in education at all levels. Many families rely on women's income. 26% of all employees now part time – higher than many competitors. Increasing nos working flexibly and that growth, largely driven by women, should be an asset. [NZ COMPARISON]

Sex inequality damages UK productivity. Women's skills under-used, too many do jobs below capabilities. Some occupations no-go areas for women. Many can't find higher productivity work that can be combined with family responsibilities. - often forces fathers to work long hours to maintain family income.

3 main causes of pay gap: occupational segregation; discrimination; and difficulties combining work with caring responsibilities.

Identifies: relative importance of each cause; what's holding women back;

**Identifies benefits of tackling causes....for business, individuals/families; society.**

States what government can do.

EEO Trust (2005), Part-time Work and Productivity Report.

Increased labour force participation as a measure of productivity.

Demographic and LF participation trends; trends/patterns in P/T work; supply and demand; workplace initiatives to support P/T wk; social policy initiatives NZ and international.

Women could be encouraged to do more f/t and pt/ wk through WLB initiatives, social policy initiatives, changed employer attitudes, to overcome the barriers noted.

Concludes: P/T work not yet the norm, but is increasing and may be the most likely source of increased labour force participation by those currently not in the labour force or about to leave it. [P/T wk likely to become the new norm, combined with education, family responsibilities, retirement and other lifestyle options]. A changing norm of the ideal worker, along with supportive policy changes at government and workplace level may be needed in order for P/T work to increase its contribution to labour force participation and productivity.

Evidence to support the theory of a potential increase in LF participation and productivity over the life course – by extending the proportion of life spent in the LF, while at the same time reducing the intensity of earlier life cycle stages which conflict with childrearing years.

Equal Opportunities Commission [June 2004], Productivity in the UK 5: Benchmarking UK productivity performance. EOC response the DTI consultation on productivity indicators.

Achievement of gender equity is central to three key elements of economic growth: an increased labour supply; flexibility, so as to be able to adjust to new growth opportunities; and rewarding workers according to their performance and skills.

Identifies EO productivity indicators.

Examines the way in which the economic contribution of women working part time is treated when productivity is being assessed; and, the need to take account of the correlation between skills shortages and the under-representation of women in key sectors.

Equal Opportunity for Women in the Workplace Agency [date?], Why EO Makes Business Sense [Aust Govt: [www.eowa.govt.au](http://www.eowa.govt.au)].

...what many employers already know: ..that EO in the workplace boosts a company's profitability and makes incredibly savvy business sense. Outlines: case studies, local/international. Five ways EO boosts productivity: helps attract and retain best talent;

helps a company's productivity and innovation; helps business to attract more female customers; and enhances company's management style.

Hyman, P [2004]. *Principles for 'A robust analysis of the costs and benefits' with respect to options for action suggested by projects for the Task Force on P&EE in the public service and public health and education sectors.*

Economic arguments for productivity/efficiency gains for EP-EV.

Briefly notes large literature that argues that many female dominated types of work are being paid below their value.

International LM links: countries recruiting from each other...deadweight costs and considerable added costs involved: Particularly re: shortages of professional staff in female dominated jobs such as nursing/teaching.

Productivity/efficiency gains from EEO: notes externalities/social benefits – and the need to make those costs and benefits visible.

Suggests types of costs/benefits to include [p 16] -- and their identification [little relevant information currently collected and where there is good data, little context in which to examine causal connections].

James, Colin (May 2005) Summary of symposium: *Labour Force Participation – It's Your Business* (Grant Johnston, Treasury, Paul Callister, VUW, and 23 public/private sector participants, facilitated by Colin James.

Productivity factors: Women returning from childrearing breaks tend to come back to lower-paid [lower productivity] jobs. There would be a productivity advantage in keeping people in or making it easier to re-enter or reduce hours, but remain productive.

Women working less, and working less productively, is the impact on others [men's] working hours. More balance and less over-participation might lift overall productivity.

Simple addition of more people to the workforce doesn't necessarily mean higher productivity – quite apart from equity issues – the real issue is in such factors as capital to worker ration, the lifting of skills and workplace organisation etc.

Kingsmill, Denise [Dec 2001]. *The Kingsmill Report: A review of women's employment and pay*, UK DTI (Cabinet Office).

Advocates view that swifter progress will be made in achieving PE by focusing on the business case for employment equity and allowing private sector employers to lead the effort in closing the wage gap as a means of achieving increased productivity.

Considers practical and business focused ways of addressing disparities.

Labour market –radical change: decreasing fertility rates; increasing life expectancy mean employers will have to look to under utilised groups within the LM and make most effective use of their human capital to maintain levels of growth. New ways of recruiting, retaining and developing women. Essential to maximise benefits of women's out-performance over men in terms of educational achievement at all levels – means

addressing the disparity between skills and attainments of women and the positions they occupy.

McMillan, John (August 2004), *A Flexible Economy? Entrepreneurship and Productivity in NZ*, Graduate School of Business, Stanford University. [obtained from The Treasury, website 23.11.05]

Labour productivity grew slowly in NZ during 1990s. Lack of investment seen by Treasury as source of problem, as the capital-labour ratio grew less than in comparable countries. Productivity picked up in late 90s and early 2000s, with output per hour of work growing at 1.7 percent a year compared with the previous decade's 1 percent – but concerns raised about NZ's slippage in world per capita income ranks and about prospects of future growth.

EO has an efficiency aspect, for it can affect productivity. Nation's stock of entrepreneurial talent may not be fully utilised perhaps at some cost to overall productivity growth [given assumption that innate entrepreneurial talent equally distributed across gender and race....]

Minister of Labour, Paul Swain [30.11.04] Workplace Productivity Speech : launch of the Workplace Prod Wkg Group Report.

..strong degree of consensus across government, business, industry and unions about the need to take shared responsibility for improving workplace productivity.

..what new initiatives might be needed to lift productivity inside the firm and promote high performing practices.

..economic development strategy....this means having enough people in work with the right skills and positive workplace cultures where everyone benefits.

..building a skilled and talented workforce.

..skill and labour shortages now one of the biggest issues facing all businesses.

...OECD 2003 shows NZ's GDP per capita is 39% lower than that of the US and that most of that gap is attributed to lower labour or workplace productivity. NZ labour utilisation rates are high by OECD standards, but labour or workplace productivity is not. Almost all OECD countries with higher levels of GDP per capita than NZ have higher levels of productivity than NZ.

..in practice, sustainable growth from improved labour productivity allows employees to receive higher wages and firms to increase profits without creating inflationary pressures. For example: better staff training boosts productivity. Gains are real, not cost plus.

OECD [1994] Medium-term determinants of OECD productivity.

Historically, there are few episodes of labour productivity. growth exceeding 2 per cent per year on average for long periods of time in the most technically advanced countries.

Policy options rather dated, with no gender analysis.

Pe'rotin, Virginie & Robinson, Andrew [Dec 2000]. *Employee participation and equal opportunities practices: Productivity effect and potential complementarities*, British Journal of Industrial Relations, Vol 38, Issue 4, P.557, Dec 2000.

Explores relationships between employee participation, EO practices and productivity.

Data from British Workplace Employee Relations Survey, 1998, provides strong evidence that EO practices improve productivity overall and increasingly so as the share of female and ethnic minority employees increases. Short-term effects, however, may be negative in segregated workplaces. Non-financial participation schemes are negatively associated with productivity but in most cases the joint presence of these participatory schemes and EO practices significantly increases productivity.

Productivity and pay and employment equity: enterprise level interventions. [paper....date/source??]

Includes potential opportunities; productivity levels; macro-economic level; risks of not acting; tasks for policymakers.

Rubery, J, Humphries, J, Fagan, C, Grimshaw, D, Smith, M (1999), *Equal Opportunities as a Productive Factor*, European work & Employment Centre, Manchester School of Management, Study for the Policy and Perspective Group of DG, European Commission.

Arguments for EO to be considered as a productive factor.

--provides an essential perspective for economic and social policymaking [p.34 conclusions]. EO dimension must be incorporated into the process. Productive in three ways: can improve efficiency and realism in policymaking process, forcing policymakers to recognise that old models of male breadwinner households and dependent wives can no longer be used as basis for employment and social policy making; can enhance the quality of men & women's lives; can contribute to the development of [European] comparative advantage by ensuring more effective utilisation of human resource potential.

--Can increase flexibility and decrease individual and social risk.

Walby, Sylvia & Olsen, Wendy (Nov 2002) *The impact of women's position in the labour market on pay and implications for UK productivity*. (DTI, Women & Equality Unit)

Focuses on whether, and if so, the extent to which women's position in employment has implications not only for their pay, but also the UK's productivity and economic performance.

Gender implications of different ways of measuring productivity; reviews relevant literature to understand causes of the gender pay gap; tries to draw tentative conclusions about how analysis of the gender pay gap can inform an understanding of the UK's economic performance, in particular levels of productivity.

### **Productivity:**

**A measure** of the extent to which economic resources are used effectively in an economy. Measurement of the ratio of economic output to economic inputs. The most

important economic input is that of labour, measured either in units of 'worker' or 'hour worked'. The choice of worker or hour worked has gender implications. Focus of the report is on productivity rather than output. **The preferred UK Government method of measurement is productivity per worker** though they monitor both [HM Treasury, 2001c] 'output per worker is the most straightforward to measure and also has the advantage of being consistent with the government's broader objective of raising trend growth.' [Drew, Richardson, Vaze, 2001]

## **5 productivity drivers and other measurement factors [p.15-16]**

It is not possible to measure directly the value of the different contribution of men and women workers to any given output. The report adopts the procedure used by the UK Treasury to measure the productivity of government services. **It assumes that wages are the best available proxy for measuring gendered productivity.** The link between pay and productivity has been used to illuminate particular aspects of women's LM experience that are likely to have a bearing on productivity levels [P.9 for more detail].

2 main causes of gendered pay and productivity differences: skills deficits and LM failures.

**Skills deficits** identified by the UK government as a specific part of the problem of low productivity among British workers. Relative lack of education and training among many women as compared to men which contributes to their lesser human capital [although young women in employment have closed that gap it is still significant for the average women – nb: UK 13% men had degrees and 8% women [1996]].

**Labour market failures** due to outmoded rigidities, such as segregation by occupation and by part-time/full-time working hours, discrimination and insufficient flexibility to enable women to combine caring and employment without detriment to their productivity.

Identifies **secondary effects of increasing women's productivity and pay**: reducing and eliminating child poverty and reducing crimes of violence. [p20]

### Treasury (June 2004), *Labour Force Participation and GDP in NZ.*

Increases in labour force participation could make a contribution towards closing the income gap between NZ and wealthier OECD countries. The paper calculates the effect on GDP of hypothetical increases in employment from increased participation, taking into account the differences in productivity between new and existing workers. Results suggest that increasing the labour force participation of women aged 25 to 34 to the average, adjusted for paid maternity leave, of the top 5 OECD nations increases employment by 28,800 and generates an additional \$1,215million of GDP – making GDP 1.0% higher than it was in the baseline year of 2001. Raising participation overall to the average of the top 5 OECD countries increases employment by 142,600 and generates additional \$6,101 million of GDP, an increase of 5.1% more than it would otherwise have been.

### Women and Work Commission [Feb 06], *Shaping a Fairer Future, UK Dept Trade & Industry.*

Better use of women's skills, key to economic prosperity.



Culture in schools and workplaces. 40 recommendations to tackle job segregation and the gender pay gap. Finds 'compelling evidence' that the pay gap and under-use of women's skills is bad for women and bad for Britain.

Increasing women's employment and ending gender segregation in which women are concentrated [caring, cashier, clerical, cleaning and catering sectors] would benefit the economy by as much as \$23 billion, worth 2% of GDP.

Many women working below their abilities – waste of talent in face of increased competition in the global market place.

GP gap multi-faceted. No one solution. Action needed from early school through to all stages of women's working lives to tackle cultures that put women at a disadvantage.

Calls on government to: fund package to enable women to change direction and raise skill levels; introduce initiative to promote quality p/t work; promote localised approach to matching jobs and skills using community centres, schools etc to recruit local women – piloted programmes; provide support for development and training of equality reps.

Women working full time earn 17% less than men – mean hrly earnings.

## Business Case

### DoL [2004/5]??? International literature review on the business case for work life balance

Reviews international literature.

Benefits:

- improved recruitment and retention rates with associated cost savings;
- reduced absenteeism and sick leave usage;
- reduction in worker stress and improvements in employee satisfaction and loyalty;
- greater flexibility for business operating hours;
- improved productivity; and
- improved corporate image.

Costs of implementing:

- direct costs such as parental leave payments or providing equipment to telecommuters;
- indirect costs associated with temporarily filling posts of absentees and temporary reductions in productivity arising from disruptions; and
- costs associated with implementing WLB policies

EO Commission, UK (Feb 2005) Part time is no crime – so why the penalty: interim report of the EOC's investigation into flexible and part-time working and questions for consultation.

Research suggests that a third to a half of women working part time are working below their potential.

All would benefit from increased flexibility: employers, employees and their families.

Would open up access to a wider pool of labour, as women tend to work where they can find part-time work, and help to retain existing staff and make better use of their skills and talents.

It may also make it easier to provide flexible services to their customers. As work intensifies, flex working can help organisations and individuals cope with the stresses and strains of work.

EO Commission, UK, (Oct 2004), Britain's competitive edge: Women: Unlocking the potential.

Tackling the causes. Not inevitable that the skills, abilities and productive potential of women should be so under-used. Clear benefits in tackling the factors that restrict them.

Benefits for business:

More equal treatment of women in the LM will increase available pool of talent and help reduce skill shortages; businesses will benefit from higher quality workforce, improved

retention rates, greater return on their investment in women's training and development and reduced recruitment costs.

Benefits for individuals and families: while many families want action to improve the balance of work and family life, only 15% of women and 20% men take the view that women should stay at home. More support to help balance work and caring, families will experience less stress and better quality family life. When more women who work can reach their full potential, their higher earnings will help reduce child poverty as well as increase their own income in retirement.

Benefits for society: fewer restrictions on productivity for women who want to work will contribute to a higher performing economy, delivering better value from women's education and skills. Working families will be better supported in bringing up the next generation, the workforce of the future that we will need for our prosperity and welfare. More equal treatment in the LM will reduce dependence on the [Exchequer].

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