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Queensland Government Submission

**House of Representatives Standing
Committee on Employment and
Workplace Relations –**

**Inquiry into Pay Equity and associated
issues related to increasing female
participation in the workforce**

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1. Executive Summary

Australia has an obligation under international treaties and conventions to ensure the application of the principle of equal remuneration¹ and to take measures to eliminate all forms of discrimination against women in employment.²

The pursuit of pay equity is consistent with the Queensland Government's state-based policy objectives for:

- *Building on economic success by:*
 - *delivering a fair industrial relations system and improving workforce management by putting people, safe jobs and workplaces first;*
 - *encouraging full participation of the available labour supply.*

The maximisation of the participation of Queenslanders in the labour market is a critical issue for Queensland. Wages are an important factor in labour supply. Fair remuneration for their economic contribution in the labour force is one important component in the policy framework for supporting female participation in the labour market.

The Queensland Government has long been at the forefront of advancing pay equity in Australia and has demonstrated its commitment to pay equity through legislative amendments allowing for equal pay for work of equal or comparable value, the adoption of an equal remuneration principle, and through a range of programs supporting women's participation in the labour market and in non-traditional areas of employment.

An Inquiry into pay equity in Queensland was undertaken in 2000/01 and resulted in the implementation of the most advanced industrial system for dealing with pay equity in Australia. A second inquiry was undertaken in 2007 to examine the effect of the *Workplace Relations Amendment (Work Choices) Act 2006* (Work Choices) on pay equity in Queensland. The research, findings and recommendations of the report of that Inquiry, *Pay Equity: Time to Act*, are pertinent to the terms of reference of the current Inquiry and a copy of the report is provided as an attachment to this submission for the consideration of the Committee (Attachment 1).

The Queensland Government welcomes the current Inquiry as an important opportunity to build upon the initiatives undertaken in Queensland.

Consideration of the terms of reference of the current Inquiry has led to the development of the following key recommendations:

RECOMMENDATION 1: *That the federal government give consideration to and respond to the findings and recommendations in the WESKI report; and in particular recommends that the Australia Workplace Industrial Relations Survey (AWIRS) be revived.*

RECOMMENDATION 2: *That the federal Government ensure that a provision for equal remuneration orders with respect to work of comparable value be included in the new industrial relations legislation.*

RECOMMENDATION 3: *That an Equal Remuneration Principle similar to that in the Queensland jurisdiction be adopted in the federal jurisdiction.*

¹ International Labour Organisation, *Equal Remuneration Convention*, 1951, no. 100

² United Nations, *Convention on the Elimination of all Forms of Discrimination against Women*, 1979

2. Introduction

Pay equity is simply the notion that women should be fairly remunerated for their contribution in paid work and that gender should not influence remuneration.

The concept of pay equity, however, has a larger application than equal pay (i.e. equal pay for the same work) in that it attempts to consider the wide range of issues underlying and contributing to the earnings gap between men and women. These issues include entrenched historical practices, the invisibility of women's skills, the lack of a powerful presence in the industrial system, and the way that 'work' and how we value work is understood and interpreted in the industrial system.

The notion of 'comparable value' is very important in understanding pay equity. While the concept of 'equal value' allows for equal remuneration when men and women are doing identical work, comparable value allows for a broader consideration of the factors noted above which contribute to pay inequity. In particular, 'comparable value' recognises the highly sex segregated nature of the work force (i.e. concentration of women's employment in a narrow range of occupations and industries) and the undervaluation of feminised work. There is often no identical occupational comparator group for areas of female dominated employment (eg. dental assistants). In such cases, 'comparable value' facilitates comparisons with work of a similar nature (eg work requiring similar qualifications) in order to allow a means by which women's work can be valued in a fair and equitable manner.

This submission begins with a consideration of the participation of women in the Queensland labour market. Attention is then turned to pay equity in Queensland – focusing first on the gender pay gap and then state based innovations in pay equity.

Consideration is then given to each of the terms of reference of the current Inquiry.

a) Women's participation in the Queensland labour market

The maximisation of the participation of Queenslanders in the labour market is a critical issue for Queensland. The lower participation rates of women in the labour market mean that there is potential for this group to increase their labour market participation. For women, their lower rates of labour market participation contribute to lower earnings over the lifecycle as well as impacting on their retirement incomes.

Queensland has experienced dramatic growth in employment over the past ten years and since 2000 has created over a third of all full-time jobs growth nationally.³ In addition, unemployment has fallen significantly with latest figures placing the Queensland unemployment rate at 3.7 per cent compared to 4.3 per cent nationally.⁴ The buoyant state economy has resulted in significant skills shortages which need to be addressed in order to facilitate current and continued economic growth and prosperity.⁵

The most recently available data from the Australian Bureau of Statistics (ABS)⁶ shows that the participation of females in the Queensland labour force is 60.5 per cent and in the total Australian labour force is 57.6 per cent. Female labour force participation is significantly below that of males, at 73.9 per cent in Queensland and 72.2 per cent nationally.

³ Queensland Government Department of Employment and Training 2005 *Queensland's proposed responses to the challenges of skills for jobs and growth; a green paper*, Brisbane

⁴ ABS 2008 *Labour Force Australia* July (Cat. No. 6202.0)

⁵ Queensland Government Department of Employment and Training, 2006 *Queensland Skills Plan*, Brisbane

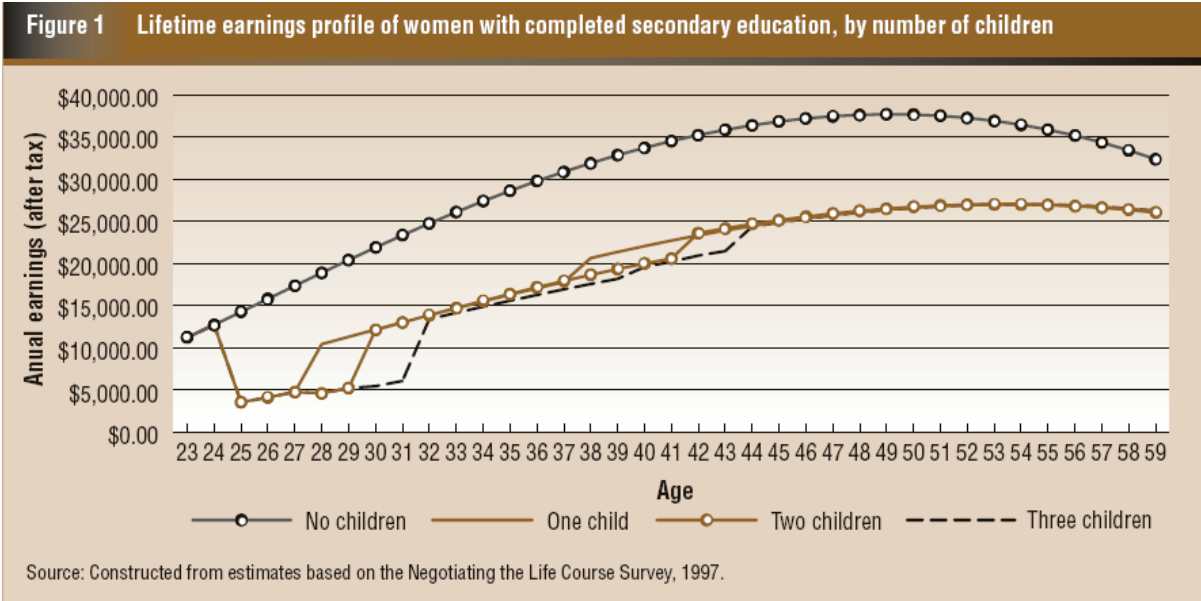
⁶ ABS 2008 *Australian Social Trends* Data Cube (Cat. No. 4102.2.3)

Whitehouse⁷ notes Australian exceptionalism in terms of mother’s employment rates. Utilising cross national data, Whitehouse shows the markedly lower employment rates for women in childbearing age groups, and particularly for mothers, in Australia compared to other member countries of the Organisation for Economic Co-operation and Development (OECD). Similarly, research by the Productivity Commission (PC) has shown that workforce participation rates of Australian women of child bearing age were ranked 20 out of 30 OECD countries.⁸

A wide range of economic, demographic and institutional factors influence the labour supply of women. From an economic perspective, the main influence on an individual’s labour supply decision is generally held to be their wage rate. This is upheld by research which shows that wages are a significant factor in labour supply.

A recent review of the research into the labour supply of Australian women concluded that it is clear that increases in women’s wages, the cost of living, the availability of suitable jobs, educational attainment, labour market experience and duration of residence are all recognised to significantly increase women’s labour force participation and the number of hours they work.⁹ The research also suggests that Government policies, such as access to child care, the removal of gender discrimination laws and the implementation of family friendly practices, affect the labour supply of women.

The cost to women of their temporary or permanent withdrawal from the paid labour force is significant in terms of current and future foregone earnings and is clearly illustrated in Figure 1. This figure uses long-term labour force data to determine the amount of earnings foregone by women due to raising children.¹⁰



⁷ Whitehouse, G., Hosking, A. 2005 ‘Policy frameworks and parental employment: a comparison of Australia, the United States and the United Kingdom’. In *Proceedings of Transitions & Risk: New Directions in Social Policy*, Centre for Public Policy, University of Melbourne

⁸ Abhayaratna J and R. Lattimore, 2006 Productivity Commission, *Workforce Participation Rates – How Does Australia Compare?* December Available at SSRN: <http://ssrn.com/abstract=1018871>

⁹ Birch, E. 2005 ‘Studies of the Labour Supply of Australian Women: What have we learned?’ *The Economic Record* 81 (252): 65- 81

¹⁰ Gray, M., Chapman, B. 2001 ‘Foregone earnings from child rearing: Changes between 1986 and 1997’, *Family Matters*, 58 p3; Beggs, J., Chapman, B. 1988, *The Foregone Earnings From Child rearing*, Discussion Paper no. 190, Centre for Economic Policy Research, Australian National University, Canberra.

The figure illustrates the higher, sustained earnings for childless women over their working life. Women with children achieve lower levels of pay and experience periods of very low earnings. In the Australian context, lower earnings and breaks in earnings also mean lower rates of superannuation accumulation which translates into lower retirement incomes extending pay inequity into old age.

Review of the research clearly shows that wages are an important component in the labour supply of women. Therefore, fair and equitable remuneration for women for their economic contribution in the labour force is one important component in the policy framework for supporting female participation in the labour market.

b) Pay Equity in Queensland

Queensland has long been at the forefront of addressing pay inequity. The Queensland Government has pursued pay equity through industrial legislation and regulation as well as through a range of projects aimed at supporting women's participation in the labour market and in non-traditional areas of employment. The following discussion reviews the gender pay gap in Queensland and the initiatives taken to address pay equity in Queensland.

- *The Gender Pay Gap*

The generally accepted measure of the extent of pay inequity is the gender pay ratio, that is, the ratio of female to male earnings, expressed as a percentage gap. The 2000/01 pay equity Inquiry found that a gender pay gap existed in Queensland. It was noted that the precise size of the gap is difficult to ascertain and varies according to the measurement tool used as well as across occupations and industries.¹¹

While recognising these limitations, analysis of the most recent available data can be used to approximate the gender pay gap in Queensland as being 17 per cent¹². This is based on average total cash earnings for full-time non managerial adult employees. Table 1 also provides a breakdown of the gender pay gaps, based on the same data, for each state and territory and for Australia overall.

*Table 1: Total Cash Earnings (full-time, non-managerial, adult) gender pay gap by states and territories, May 2006 (%)*¹³

Australia	QLD	NSW	VIC	WA	SA	TAS	NT	ACT
16	17	16	17	25	9	8	15	7

A further analysis by Preston and Jefferson¹⁴ assesses trends in Australia's gender pay ratio. Their analysis, based on annual average weekly ordinary time earnings, shows a marked resilience in the gender pay ratio in the period from 1992 to 2007 (see Table 2). The ratio has remained unchanged for Australia as a whole for this period whereas for Queensland, the change (a slight improvement) is small.

*Table 2: Annual average weekly ordinary time earnings gender wage ratio (in full-time employment) by states and territories, 1992 and 2007 (%)*¹⁵

	Aust.	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
Feb. 1992	83.7	82.4	84.7	83.2	90.6	81.2	84.4	81.3	82.3

¹¹ Queensland Industrial Relations Commission, 2001 *Worth Valuing* QIRC, Brisbane

¹² ABS 2007 *Average Weekly Earnings* (Cat. No. 6302.0)

¹³ ABS 2006 *Employee Earnings and Hours* (Cat. No. 6306.0)

¹⁴ Preston and Jefferson 2008 'Trends in Australia's Gender-Wage Ratio' *Labour and Industry* 18 (2)

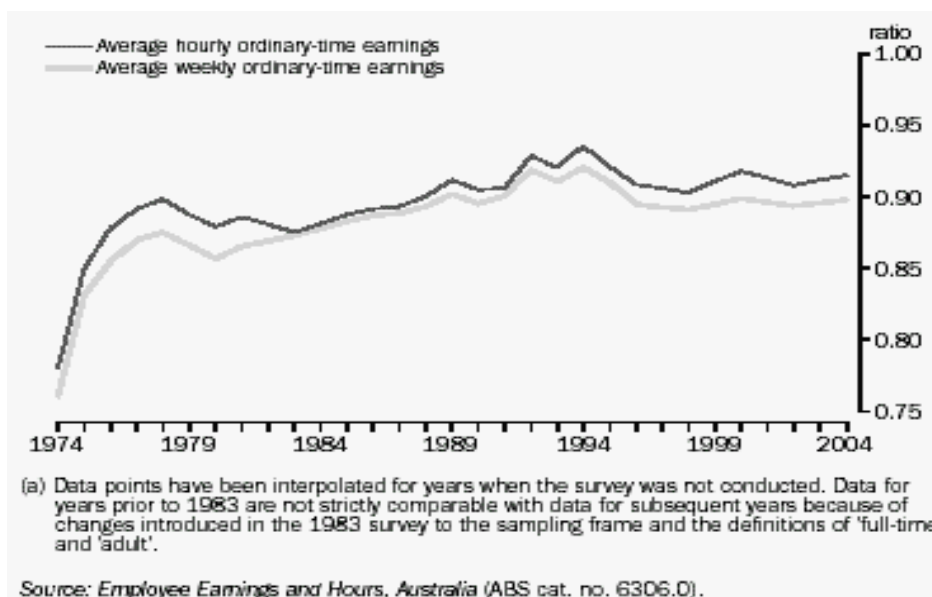
¹⁵ ABS 1992 and 2007 *Average Weekly Earnings* (Cat. No. 6302.0)

Aug. 2007	83.7	84.5	83.9	84.8	86.1	72.9	90.8	88.3	85.4
Change *	0.05	2.09	-0.75	1.59	-4.57	-8.26	6.35	6.98	2.81

* percentage point

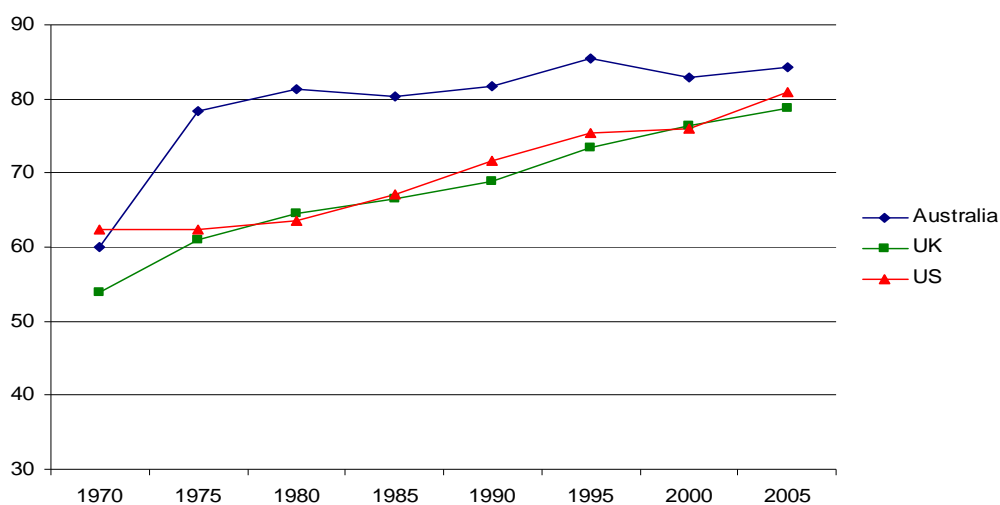
The ABS published a special paper on the gender pay gap in the 2005 issue of Australian Social Trends. A chart (figure 2) from that publication is reproduced below and graphically depicts the persistence of the gender pay gap in Australia.

Figure 2: Female/male earnings ratio among full-time adult non-managerial employees May 1974 to May 2004(a)¹⁶



The chart also clearly shows the dramatic narrowing of the gender pay gap which was possible under a system which allowed a 1972 decision granting equal pay for equal work to be flowed through in a series of decisions on specific awards thereby having a marked impact on the gender pay gap. Although other countries also adopted initiatives in equal pay at around the same time, comparisons clearly show the superior gains achieved in Australia via a centralised industrial relations system (see figure 3).

Figure 3: Gender pay ratios, based on female/male median weekly earnings for full-time employees, Australia, UK and US, 1970-2005



¹⁶ ABS, 2004 *Employee Earnings and Hours, Australia* (Cat. No. 6306.0)

The persistence of a significant and measurable gender pay gap for over two decades is a clear indicator of the need to consider further means by which pay inequity can be effectively addressed in Australia.

- Queensland pay equity initiatives

The Queensland Government has pursued pay equity through industrial legislation and regulation as well as through a range of projects aimed at supporting women's participation in the labour market and in non-traditional areas of employment.

Industrial responses

In 1999, the Queensland Industrial Relations Taskforce recommended that "the provisions providing for orders in relation to equal remuneration for work of equal value be amended to clarify the definition of equal value as being work of 'equal or comparable value'. The importance of the concept of 'comparable value' was noted earlier and its addition clarified that comparisons could be made across dissimilar occupations to measure the value of the work. This recommendation was included as the new equal remuneration provision in the new Queensland *Industrial Relations Act 1999* (IRA).

In 2000, the Queensland Government announced a Pay Equity Inquiry to be conducted by the Queensland Industrial Relations Commission (QIRC). The terms of reference of the Inquiry required the examination of the extent of pay inequity in Queensland and the adequacy of existing legislation arrangements for achieving pay equity. The QIRC made 20 recommendations, the majority of which were adopted by the Queensland Government. The most significant outcomes were (1) legislative amendments to ensure equal remuneration for workers when approving awards and agreements, as well as a general ruling about a Queensland minimum wage for all employees at least once a calendar year, (2) an Equal Remuneration Principle (ERP), and (3) a pay equity grants program to resource pay equity cases under the ERP.

The introduction of Work Choices posed a number of potential limitations on the innovations operating to advance pay equity in Queensland. In response, on 8 March 2007, International Women's Day, the Honourable John Mickel MP, then Minister for State Development, Employment and Industrial Relations, announced a second Inquiry into pay equity to be undertaken by the QIRC. The Inquiry sought to examine the pay equity gains made in Queensland subsequent to its 2001 Inquiry, the impact of Work Choices on pay equity in Queensland and strategies to progress pay equity in light of these reforms. The Inquiry was assigned to Commissioner Fisher who delivered her report, *Pay Equity: Time to Act* (the Report) on 28 September 2007. The Report has been drawn on extensively in responding to the terms of reference of the current Inquiry.

The Report commended the Queensland Government for continuing to take the lead in pay equity and found that the advancements made through existing pay equity initiatives in Queensland stood to be whittled away or lost due to the introduction of Work Choices which severely limited the effectiveness of these measures, particularly that of the ERP. The Report also found that while, to date in Queensland, pay equity had been considered in an industrial relations context, the causes of pay equity go beyond industrial concerns and encompass broader social issues and require a similarly broad approach if they are to be effectively addressed. The Report made a raft of recommendations that aimed to both protect and advance pay equity gains that had been made in Queensland.

The election of the current Federal Government in November 2007 and the proposed formation of a new national industrial relations system significantly alter the context in which

the 2007 Inquiry was undertaken and provide new opportunities to address pay equity. The Queensland Government is carefully reconsidering the Inquiry's key recommendations in the light of this new context.

Initiatives supporting women's participation in the Queensland labour force

The Queensland Government's Office for Women (OFW) is currently implementing the *Smart Women – Smart State* strategy, and the *Women in Hard Hats* election commitment: two significant initiatives that aim to address occupational segregation by attracting and retaining women in non-traditional industries. Occupational segregation by gender has a negative impact on pay equity for women as male dominated industries are often better paid than female dominated industries. In turn, lower pay for women impacts upon women's dependents.

The Smart Women – Smart State: Science, Engineering and Technology (SET) Action Plan (2006 – 2009). Women make up just over 50.3 per cent¹⁷ of the Queensland population but constitute only about 37 per cent of the State's SET workforce.¹⁸ The under-representation of women in these fields will restrict the recruitment pool for competitive business as well as reduce women's overall employment opportunities, with associated security and income effects. In order to address the under-representation of women in SET industries the Queensland Government has backed the development of the *Science, Engineering and Technology Action Plan (2006 – 2009)* (the SET Action Plan).

The role of the *Smart Women – Smart State Taskforce*, established in 2005, is to advise the Queensland Government, via the Minister for Women, on the development and implementation of the *Smart Women – Smart State Strategy*¹⁹. The *Smart Women – Smart State Taskforce* is made up of leaders in the SET industries as well as university and government representatives. The *Smart Women – Smart State Taskforce* is part of the Queensland Government's overarching goal to improve women's capacity to achieve economic security. The main focus of the *Smart Women – Smart State Taskforce* is the implementation of the SET Action Plan.

Women in Hard Hats (WIHH) is a scheme, in conjunction with the SET Action Plan, to promote women's employment participation in the mining, construction industries and emerging science technology fields. Through the promotion of retention and attraction strategies within the mining, construction, science, engineering and technology industries (MCSET), the scheme will provide:

1. increased numbers of women in MCSET industries;
2. increased women in Traineeships and scholarships in MCSET; and
3. More women in senior and leadership roles in MCSET Industries.

Key activities have been delivered under the SET Action Plan and WIHH which aim to either attract or retain women in non-traditional industries. The long term outcome of occupational desegregation will benefit individual women economically, and assist women to access better paid industries. These activities include: *Women Engineering Queensland workshop; Women in Construction Week; Promoting non-traditional careers to young women; Indigenous Working Women's Fund; and Women in Trades grants.*

The Queensland Government welcomes the current Inquiry as an important opportunity to build upon the initiatives undertaken in Queensland to address gender pay inequity.

¹⁷ *Total Population by Sex, Queensland, 1976 to 2051 (medium series)*, Office of Economic and Statistical Research, Queensland Government (<http://www.oesr.qld.gov.au/>), accessed April 2006.

¹⁸ *Calculations based on data in: Employed Persons by Sex, Occupation, State, Status in Employment, 6291.0.55.001 – EO8*, Australian Bureau of Statistics, Data Cubes: 1986-1996 and 1996-2005.

¹⁹ Available online at <http://www.women.qld.gov.au/work-and-life/smart-state-strategy/>

3. Terms of Reference

a) Adequacy of current data

The Queensland Government recognises the importance of the availability of adequate data to monitor changes in the status of working women in Australia.

The Queensland Government has undertaken to fund comprehensive research on the status of working women, including projects on:

- changing law and practice in Queensland and its impact on gender equity and work/family balance;
- the impact of changes in national work regulation on vulnerable workers;
- access to paid maternity, paternity and parental leave in Australia;
- assessing the economic impacts of occupational segregation (MINCO project); and
- the influence of employment quality, time and activities with children and parenting practices

In addition, as a result of the decommissioning of the Australia Workplace Industrial Relations Survey (AWIRS) by the previous federal government, the Queensland Government has undertaken its own comprehensive longitudinal research survey, the Queensland Workplace Industrial Relations Survey (QWIRS) in 2005 with the intention to produce regular data every 3 to 5 years.

While State-run surveys, such as the QWIRS, are able to provide important and functional data, they cannot truly replace a regular national survey such as AWIRS. The demise of AWIRS has left a significant void in the amount and quality of data available to monitor the conditions and wages of Australian workers. The Report of the 2007 Queensland pay equity Inquiry made note of the current deficiencies in national longitudinal employment data in Australia.

The Report also noted the Women Employment Status Key Indicators (WESKI) report which was prepared by the Women in Social and Economic Research at the Curtin University of Technology for the Human Rights and Equal Opportunity Commission (HREOC), the Women's Electoral Lobby, and the National Foundation for Australian Women. The WESKI report provides a comprehensive assessment of current indicators of the employment situation of women in Australia.

The WESKI report found: a deficiency in appropriate, quality longitudinal data collected on workplace and industrial relations since the abolition of AWIRS; a lack of reassessments to data sets collected by the ABS to compensate for the removal of AWIRS, or to better suit the new national industrial relations regime; and the restricted data available on earnings and employment conditions in workplace agreements.

The Queensland Government notes the need for a national response to the WESKI report findings. It is crucial that new data collections are developed and currently existing collections modified to provide capacity to accurately monitor women's wages and other employment related conditions.

RECOMMENDATION 1: *That the federal government give consideration to and respond to the findings and recommendations in the WESKI report; and in particular recommends that the Australia Workplace Industrial Relations Survey (AWIRS) be revived.*

b) The need for education and information on pay equity

The 2007 Report of the Queensland Inquiry into Pay Equity noted that in international comparisons of pay equity initiatives, Australia stood out for its lack of a national initiative in pay equity. Despite the important initiatives being taken at the State level in Australia, there is a need for a national initiative to support the steps already being taken to improve understanding and appreciation of pay equity amongst employers and employees.

Pay Equity tends to be poorly understood by not only employees and employers but by the general community as well. As indicated earlier, although a relatively simple concept, there are a myriad of complex issues affecting pay inequity, workforce participation and the financial independence of women.

At a recent roundtable on pay equity, hosted by the federal Office for Women, the importance of further education and information on pay equity was noted. A key outcome of the roundtable was a list of recommendations to improve the gender pay gap which included the recommendation of the need to “continue to raise awareness of gender pay equity issues”.

A common approach to providing this information and education has been to establish a body which has as its primary responsibility the promotion of pay equity. Examples of this are the Pay and Employment Equity Unit established in the Department of Labour in New Zealand (<http://www.dol.govt.nz/services/payandemploymentequity>) and the Pay Equity Unit established in the Department of Consumer and Employment Protection in Western Australia ([http://www.docep.wa.gov.au/LabourRelations/Content/Work%20Life%20Balance/Pay%20Equity/About the Pay Equity Unit.html](http://www.docep.wa.gov.au/LabourRelations/Content/Work%20Life%20Balance/Pay%20Equity/About%20the%20Pay%20Equity%20Unit.html)). Industrial Relations Victoria (IRV) has also developed a range of educational and promotional resources in pay equity (http://www.business.vic.gov.au/BUSVIC/STANDARD/PC_61635.html).

At the federal level, both the Equal Opportunity for Women in the Workplace Agency (EOWA) and HREOC have provided information and resources on pay equity. These agencies, however, deal with a broad range of issues and are not able to provide the same level of promotion of pay equity that would be possible if the issue were to be addressed by a separate body.

A key component of the initiatives undertaken in both Western Australia and Victoria has been the development of promotional partnerships in pay equity with the private sector. The first of these in Australia was the joint National Australia Bank/Finance Sector Union pay equity audit conducted in conjunction with IRV. Further audits in conjunction with IRV are now being undertaken by Moreland City Council and the City of Greater Bendigo. In Western Australia, the pay equity unit is also providing assistance in the conduct of pay equity to private sector organisations. These are important vehicles by which the promotion of pay equity can reach the private sector.

In addition to initiatives in the private sector, pay equity units can provide information and resources to the public sector. This has been the approach in New Zealand where a pay equity plan of action has seen pay and employment equity reviews undertaken in most government agencies with a view to extending this process to government owned corporations, local government and the private sector in the future.

The need for further education and information on pay equity has already been identified by a national roundtable on pay equity. A national initiative is now necessary to support the steps already being taken at the State level to improve the understanding and appreciation of pay equity amongst employers and employees.

c) Current structural arrangements in the negotiation of wages impacting negatively on women

The current structural arrangements in the negotiation of wages that potentially impact negatively on women include:

- classification and remuneration systems (CRS);
- the method of minimum wage setting;
- collective wage setting;
- leave provisions and work/life balance; and
- superannuation and retirement incomes.

These issues are very much interrelated and were dealt with in some detail in the report of the 2007 Queensland Inquiry into Pay Equity. There have been a number of developments at the federal level which have mitigated many of the concerns expressed in the report however the discussion is still relevant in highlighting areas of potential negative impact on women workers. A discussion of each of these areas follows.

Classification and remuneration systems

Many more women than men are reliant on awards to set their pay and conditions of employment. For example, businesses with more than 60 per cent female employees are more likely to use award pay and conditions exactly as set out in the award for at least some of their employees²⁰. CRS in awards, therefore, provide the primary means by which the pay for many women is determined and is the means by which they access skills related career paths.

The award modernisation process initiated earlier this year by the federal government will see the creation of new modern awards that will, importantly, include pay scales. Awards will be simplified and in many cases amalgamated, resulting in a reduced number of awards. The timeframe for modernisation is short, with the Australian Industrial Relations Commission (AIRC) requested to complete modernisation of awards in priority industries by December 2008 and in all other industries by 31 December 2009.

The Queensland Government made a comprehensive submission on the award modernisation process to the AIRC in June 2008.²¹ That submission specifically addresses pay equity and highlights the award reliance of women workers and proposes the correct alignment of wage rates and classification structures of female dominated awards with those of male dominated awards to support pay equity. This proposition would see the alignment of awards covering occupations of similar work value, skill and qualification levels to a uniform classification structure based on broad banding and competency levels. The majority of male-dominated industries are already aligned to the *Metal, Engineering and Associated Industrial Award 1998* however, a number of female dominated industries and occupations (such as aged care, hair and beauty therapy) have not been aligned. Ensuring the proper alignment of awards and key classifications for female dominated industries and occupations provides a sound foundation from which pay equity can be pursued.

A further concern of the Queensland Government submission on award modernisation is the importance of the capacity for the industrial parties to maintain and vary awards in order to ensure that awards remain fair. The position of the Queensland Government is that representative parties, such as unions and employer associations, must have the right to seek variation and adjustment of award conditions. This is particularly important in relation to pay

²⁰ Award Review Taskforce 2006 *Award Review Taskforce Final Report on Rationalisation of Wage and Classification Structures*, Australian Government, Canberra

²¹ Available at <http://www.deir.qld.gov.au/pdf/ir/submission-award-modernisation.pdf>

equity where the review of awards will be critical to the pursuit of pay equity, particularly in female dominated industries and occupations.

The current difficulty with respect to classification and remuneration systems, given the fundamental importance of the issue to pay equity, is one of timing. Given the short time-frame for award modernisation, it is difficult to see how the current Inquiry will be able to have input into this process.

Despite these difficulties, the proper alignment of awards and key classifications for female dominated industries and occupations with those of male dominated awards and the ability of the industrial parties to maintain and vary awards are issues of fundamental importance to the pursuit of pay equity.

Method of minimum wage setting

One of the key features of the Australian industrial relations system supporting pay equity has been the approach traditionally adopted to the setting of the minimum wage. A concern with fairness and a decent living wage for individuals has meant the prevention of the overall widening of wages distribution and the extension of low pay. Given women's over representation in low paid areas of employment, this has been an important component in maintaining a reasonable outcome for pay equity.

In the Report of the 2007 Queensland Inquiry into Pay Equity, the move to wage setting under the Australian Fair Pay Commission (AFPC) was seen as posing particular concerns for pay equity. The changed criteria on which the minimum wage is set requires the AFPC to have regard to "the capacity for the unemployed and the low paid to obtain and remain in employment" and "employment and competitiveness across the economy" with the goal of "providing a safety net for the low paid" third on the list. Without a prioritisation of a decent (living) wage for individuals regardless of their household situation, the minimum wage system is unlikely to continue to support adequate pay equity outcomes.

Although there has been no change in the criteria on which the minimum wage is set under the AFPC, the most recent wage setting decision of the AFPC,²² specifically addresses pay equity under the topic of discrimination. The decision notes that a number of concerns in regards to pay equity were raised in submissions to the AFPC. These include recent increases in the gender pay gap, as well as the argument that the AFPC should more explicitly refer to pay equity when making its wage setting decisions. The discussion on pay equity concludes that further research into gender pay differentials is warranted and commits the AFPC to undertaking research focusing on:

- trends in gender pay differentials over time; and
- variations in gender pay differentials across industries and occupations.

This further research is timely and welcomed.

The setting of minimum wages is critically important to the pursuit of pay equity. The return to an emphasis on fairness and the provision of a decent living wage for individuals as criteria in determining minimum wages are important in limiting overall wage dispersion, the extension of low pay and promoting pay equity.

Collective bargaining

The 2001 Report of the Queensland Inquiry into Pay Equity noted concerns with the move to enterprise bargaining in Australia with respect to the likely outcomes for women and for pay equity. The limited access of many women to enterprise bargaining (due in part to women

²² Australian Fair Pay Commission, 2008 *Federal Minimum Wage Determination*, Canberra

being more likely to be employed in small workplaces) and their more limited bargaining position (due in part to low levels of trade union membership in female dominated employment areas) was seen as leading to poorer outcomes for women workers through enterprise bargaining as opposed to centralised wage setting. The 2001 report found that women were not faring as well as men under enterprise bargaining.

The 2007 Report of the Queensland Inquiry into Pay Equity noted that the favouring of individual bargaining as the prime wage setting instrument under Work Choices was of major concern to pay equity. The Report noted research which highlighted that women were not faring well under individual wage setting arrangements. The Report provided an overview of recent research which illustrates the demise in the relative earnings of women in individualised sector of the labour market leading up to the introduction of Work Choices. The new agreement making process under Work Choices was seen as likely to exacerbate this trend.

Also of concern was that the term 'bargaining' could be considered a misnomer for workers in vulnerable positions²³. This was borne out in the report of the research which investigated the impact of Work Choices on vulnerable workers. The *What Women Want* report²⁴ identified the confusion and vulnerability that low paid women employees felt in individualised bargaining settings. The report refers to the constant themes of fear and intimidation experienced by women in the bargaining process and their vulnerability in raising issues with their employers out of concern for their job security in light of changes to unfair dismissal laws.

The enactment of the *Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008* has seen important changes with respect to individual bargaining. The key changes include the prevention of the creation of new Australian Workplace Agreements and the introduction of a new no-disadvantage test to apply to Individual Temporary Employment Agreements and employee and union collective agreements (which requires that a workplace agreement not reduce employees' overall terms and conditions of employment when compared with a 'reference instrument'). These have been very important and welcome changes for pay equity.

The findings of the 2001 and 2007 Reports of the Queensland Inquiries into Pay Equity together highlight the significance of centralised wage setting in supporting pay equity and the concerns raised by moves to decentralise wage bargaining. The more limited access of many women workers to enterprise bargaining and their more limited bargaining position will continue to be particularly important issues for pay equity.

Leave provisions and work/life balance

Access to various types of leave, such as paid maternity leave, annual leave and personal leave for caring purposes, are important in affecting women's ability to manage their family responsibilities. The Queensland Government was the first jurisdiction in Australia to offer all employees a statutory 'right to request' (RTR) a part-time workload for individuals with a child under school-age. This RTR provides a procedure for eligible employees to alter work habits to better handle their caring responsibilities. While the RTR may be refused on reasonable business grounds, the policy has been effective in supporting women, recognising their dual role as mother and employee, and providing a mechanism by which women can move to part-time work.

²³ Ellem, B., Baird, M., Cooper, R., Lansbury, R. 2006 "'Workchoices': Myth-making at Work' *Journal of Australian Political Economy* 56:17, 58

²⁴ National Foundation for Australian Women, 2007 *What Women Want: Consultations on Welfare to Work and Work Choices*

The new National Employment Standards include a ‘right to request flexible work arrangements’. This represents an important and positive change for pay equity. The new policy will provide a mechanism for all employees under the federal industrial relations system to apply for alteration to hours, schedule and location of work, or to convert to part-time work, if they are the parent, or carer, of a child under school-age.

As HREOC noted,²⁵ pay inequity is a major factor in determining the choices that men and women make about balancing work and family. Leave provisions are extremely important measures for addressing part of the disadvantage experienced by women in the workforce and ultimately in assisting families in making choices about their caring arrangements.

Superannuation and retirement incomes

Earlier in this discussion, the importance of pay inequity on women’s life time earnings and retirement incomes was highlighted. The current structural arrangements around superannuation systemically discriminate against workers who bear the primary responsibility for caring in families. Superannuation has become the preferred way of providing for retirement incomes, yet the current system advantages those with long term, uninterrupted attachment to the labour market. This means that workers who take breaks from paid work to engage in unpaid caring work, and who often return to work part-time for a period, are at a significant disadvantage in the accumulation of retirement incomes.

HREOC²⁶ reports figures which show that half of all women currently aged between 45 and 60 years have \$8000 or less superannuation, while 70 per cent have \$25,000 or less. The absence of financial independence in retirement or old age means poverty for many women. The impact of pay inequity in retirement incomes for women is of particular importance and in need of review.

This discussion has emphasised several key issues with the structural arrangements currently in place for the negotiation of wages, and examined the negative impact that these structures can have on gender equality in the workplace. These issues, of primary importance to pay equity, are closely associated with the following section, examining the adequacy of equal remuneration provisions in Australia. The recommendations raised in the following section are therefore directly relevant to the issues raised here.

d) The adequacy of recent and current equal remuneration provisions in state and federal workplace relations legislation

The second term of reference of the 2007 Queensland Inquiry into Pay Equity required an assessment of the impact of Work Choices on legislative measures addressing pay equity under the federal and State systems. Section 3 of the Report addressed this issue in some detail.

The Report found that the Commonwealth Act has never provided real opportunities to correct the undervaluing of feminised work or skills. This is because, in the first place, AIRC equal remuneration orders are limited to work of equal value and the Commonwealth legislation has never contemplated equal remuneration for work of comparable value. The requirement that rates of remuneration must be established on the basis of gender discrimination before a corrective order can be made has impeded progress towards pay

²⁵ Human Rights and Equal Opportunity Commission 2007 *It's About Time: Women, men work and family*, Final Paper pg 80

²⁶ Human Rights and Equal Opportunity Commission 2007 *It's About Time: Women, men work and family*, Final Paper, 2007 pg 41

equity through equal remuneration orders under the Commonwealth Act. This was highlighted in the unsuccessful *HPM Case*.²⁷ The Report adds that the impediments to pay equity in the Commonwealth jurisdiction revealed by the *HPM Case* were not alleviated by the Work Choices amendments and indeed further restrictions were added.

The equal remuneration provision in Chapter 2 Part 5 of the IRA differs in a significant way from the Commonwealth provisions. The QIRC is empowered to make equal remuneration orders with respect to work of comparable value, not just equal value.

In addition, following the first Queensland pay equity Inquiry, a Full Bench issued an equal remuneration provision (ERP) separate from the Wage Fixing principles applying in the Queensland jurisdiction. The Principle was framed to provide a blueprint to industrial parties and to the Commission of the types of factors to be addressed in assessing the value of work predominantly performed by women. It contains traditional work value elements but includes other types of issues to be taken into account such as award histories, occupational segregation, and the occupation's demographics. The Principle also specifies that male comparators and discrimination are unnecessary to find undervaluation but that the evaluation is to be undertaken transparently, objectively and in a gender neutral way. If undervaluation is found, the principle also provides guidance on how it may be rectified. The introduction of Work Choices has, however, placed important limitations on the operation of the ERP.

Clearly the State law survives in its entirety for employees remaining in the Queensland jurisdiction. The difficulty, however, is that any union which seeks to pursue an equal remuneration case under the IRA and ERP for a particular occupational group is likely to find that the industrial regulation for that group is either spread across both the federal and State systems or wholly in the federal jurisdiction. The impact of having the occupational group spread across jurisdictions raises questions about the efficacy of the pursuit of such cases in the future and the effectiveness of any outcomes. It is also possible that an employer faced with an equal remuneration case may seek to incorporate their business in order to avoid the case and/or its outcomes.

So, although the Queensland ERP provisions survive in their entirety for Queensland employees covered by the State jurisdiction, their application and effectiveness is limited by having only partial coverage of an occupational group. This threatens the potential for pay equity remedies previously available to workers in Queensland.

The two successful applications for equal remuneration which have been conducted under the ERP in Queensland illustrate the potential gains which are now under threat. These two cases, for dental assistants in the private sector and children's services workers, show that real gains can be made for women in "feminised" occupations through correcting undervaluation of skills or failure to recognise the skills required in performing that work.

The Report of the 2007 Queensland Inquiry into Pay Equity found that the ERP provides a useful analytical framework for the consideration of pay equity. The cases conducted under the Principle illustrated this usefulness by highlighting the lack of access to enterprise bargaining as significant impediments to the earnings of dental assistants in private practice and the traditional undervaluation of the work performed by the two predominantly female occupations considered. The Report also found that the ERP has been an important tool in educating the QIRC and industrial parties about pay equity and that this learning process and the lack of precedents led to concerns being expressed with respect to the resource intensive nature of cases. The funding program available in Queensland to support cases conducted under the ERP was found to be important in addressing this concern, at least in part.

²⁷*Automotive, Food, Metal, Engineering, Printing and Kindred Industries Union v HPM Industries* (Print P9210)

Limitations in the application of the ERP were also noted. In particular, it was accepted that it is likely that the ERP is most useful in respect of discrete occupational groups where award histories can be readily analysed for gender bias and where common duties, skills, responsibilities and other relevant work features can be readily identified and assessed in a gender neutral manner. The Report went on to state that the ERP and legislative amendments made as a consequence of the report of the first Inquiry into pay equity in Queensland were always only going to have an effect on the causes of pay inequity over which the QIRC had some oversight. As such, and especially in light of the starkly different industrial context which applied at the time, it was considered likely that a Principle such as the ERP had greatest effectiveness in the context of a suite of measures designed to address pay inequity.

Notwithstanding the limitations noted in the report, the ERP has been a very useful analytical tool in the consideration of pay equity.

The following recommendations are proposed as important steps in providing for greater fairness with respect to pay equity in the industrial relations framework and in addressing the structural arrangements in the negotiation of wages impacting negatively on women.

RECOMMENDATION: *That the federal Government include in the new legislation a provision for equal remuneration orders with respect to work of comparable value*

RECOMMENDATION: *That an Equal Remuneration Principle (ERP) similar to that in the Queensland jurisdiction be adopted in the federal jurisdiction.*

e) The adequacy of current arrangements to ensure fair access to training and promotion for women who have taken maternity leave and/or returned to work part-time and/or sought flexible work hours

Part-time work and flexible work provisions are a common means by which many women workers attempt to achieve a better work/life balance. Ensuring that part-time work is not incompatible with career success is a key pay equity issue.

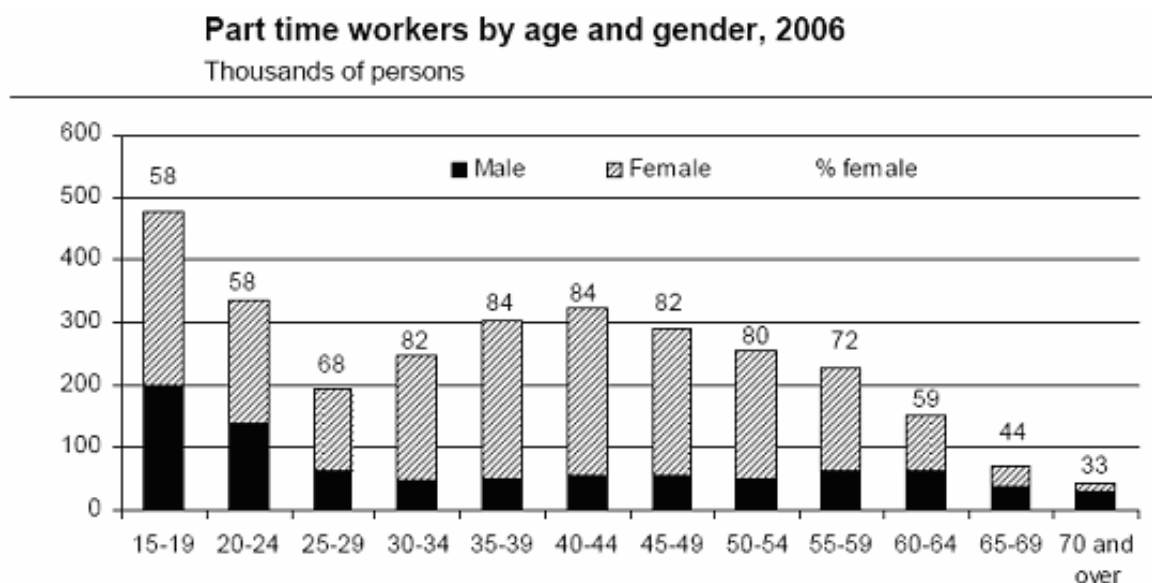
The increased use of part-time work and flexible work provisions amongst female employees in Australia is clearly linked to the birth and raising of children. As noted earlier in this submission, the labour supply of Australian women is reduced to a greater extent than their international counterparts with the birth of children and when caring for young children.

An ARC research project conducted during 2004 – 2008, in which the Queensland Department of Employment and Industrial Relations was an industry partner, investigated the experience of maternity leave in Australia.²⁸ Data from the study clearly showed key transitions for working women around the birth of children. Following the birth of a child, almost 70 per cent of mothers previously in full-time employment returned to work on a part-time basis while those mothers previously employed part-time overwhelmingly (98 per cent) remained employed in that capacity.²⁹ This is reflected in the aggregate data which shows the large number of women of childbearing age (24-44 years old) employed in a part-time capacity (see Figure 4).

²⁸ Whitehouse, G., M. Baird, C. Diamond, 2006 *The Parental Leave in Australia Survey*, University of Queensland, Brisbane

²⁹ Whitehouse, G., M. Baird, C. Diamond, 2006 *The Parental Leave in Australia Survey*, University of Queensland, Brisbane, p 18

Figure 4: Part time workers by age and gender, 2006³⁰



While the intention is often to temporarily convert to part-time work while caring in order to retain workforce attachment, it often has a significant impact on lifetime earnings and superannuation³¹ (see figure 1, in section 2). When women reduce hours, increase flexibility or convert to a part-time workload, this is consistently coupled with a reduction in earnings, training, skill-building and career progression.

The quality of part-time work was recently the subject of a report by the PC, released on 12 June 2008, which raised a number of concerns about the quality of part-time and casual work.³² The PC report found that part-time work often offers a significant reduction in workplace benefits, such as sick-leave and flex-time, and reduced training, skill building and access to promotions; and that workers in part-time jobs are often reliant upon award rates and have no structured career progression.³³

The causes of poor career progression amongst part-time women, and women utilising flexible work practices to balance work with family responsibilities, were found to be varied, complex and ingrained and included the poor quality of many part-time jobs, lack of affordable child-care, and a workplace culture that rewards length of service and time-commitment over ability and merit. Ensuring that part-time work is not incompatible with career success is a key pay equity issue.

In addition, the Australian Public Service (APS) Commission recently released internal APS data on the career progression of women who took maternity leave in 2000/2001. The data (see figure 5) shows that women who took maternity leave were considerably less likely to have been promoted (6-7 years later) than those women who did not take maternity leave.

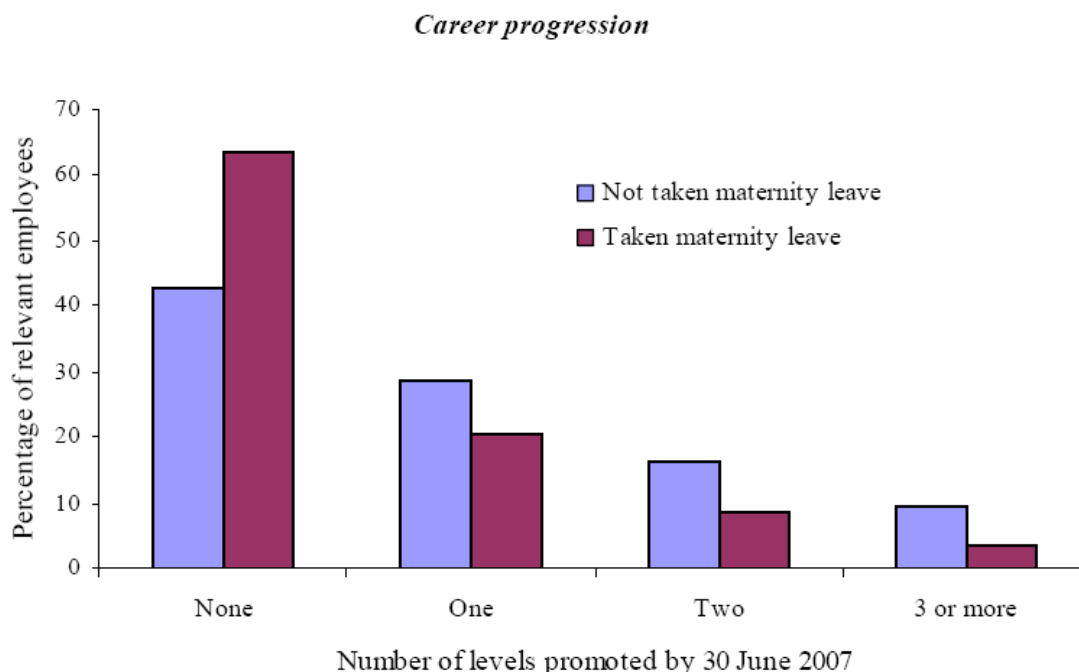
³⁰ ABS, 2007. *Labour Force Australia* (Cat. No. 6291.0.55)

³¹ Venn, D. and Wakefield, C. 2005 'Transitions between full-time and part-time employment across the life-cycle' Paper presented at the HILDA Research Conference, Melbourne, 29 September

³² Abhayaratna, J., Andrews, L., Nuch, H. and Podbury, T. 2008 *Part-Time Work: The Australian Experience*, Productivity Commission, Canberra

³³ Abhayaratna, J., Andrews, L., Nuch, H., Podbury, T. 2008 *Part-Time Work: The Australian Experience*, Productivity Commission, Canberra

Figure 5: Career progression of women employed in the federal public service 2000/2001 – 2007³⁴



The poor career progression and limited access to training and skills development experienced by women returning from maternity leave, and women engaged in part-time work, are core issues affecting the lifetime gender pay gap and gender pay inequity. The provision of education and information for employers and employees on the issues raised in this section will be a key step in addressing the overall disadvantage experienced by many women in the workplace. The discussion in section 3(b) of this submission is particularly relevant in this regard.

f) The need for further legislative reform to address pay equity in Australia

In considering the need for further legislative reform to address pay equity in Australia, examination of pay equity responses in other countries will be important. As previously noted, it is most likely that any further legislative measures will have greatest effectiveness in the context of a suite of measures designed to address pay inequity.

Inequity between the pay of men and women is not an issue confined to Australian workplaces but, to varying degrees, is present throughout the world. The Organisation for Economic Cooperation and Development (OECD) *Employment Outlook 2008*³⁵ states that although women's rising labour market participation has been a major component in labour supply growth during past decades, their labour market performance still remains significantly worse than that of men. *Employment Outlook 2008* reports that across the OECD countries, women are paid 17 per cent less than their male counterparts and that 30 per cent of the gender pay gap is attributable to discriminatory practices. The report while noting the importance of education, training, labour market reforms and the provision of work and family friendly policies, also calls for stronger enforcement to address discrimination.

³⁴ Australian Public Service Commission, 'Submission to the Inquiry into Maternity, Paternity and Parental Leave' Productivity Commission Submission No. 98, 2008

³⁵ Organisation for Economic Cooperation and Development 2008 *Employment Outlook 2008*, OECD, Paris

An examination of the initiatives taken by other countries to tackle pay equity reveals a broad range of policies, varying in structure, flexibility and methodology.³⁶ The Report of the 2007 Queensland Inquiry into pay equity focused examination on the approaches adopted in New Zealand and Quebec (Canada) given their relevance to the Australian situation.

Sweden is another country of note with respect to pay equity. According to the Gender Gap Index, compiled by the World Economic Forum and which examines the gender gap or level of equality between men and women in 115 countries over four fundamental categories, Sweden, Norway and Finland all stand out as the most advanced nations having closed over 80 per cent of the gap.³⁷

Analysis of these, and other, models to promote pay equity is instructive in the range of approaches adopted in others countries in addressing pay equity and the relative merit of legislative and other policy measures in the pursuit of pay equity. As previously noted, it is most likely that any further legislative measures will have greatest effectiveness in the context of a suite of measures designed to address pay inequity. The development of a national initiative in response to pay equity is long overdue in Australia.

³⁶ Marie-Therese Chicha, *A Comparative Analysis of Promoting Pay Equity: models and impacts*. ILO, Geneva 2006

³⁷ World Economic Forum, 2007 'Gender Gap Index, *Global Gender Gap Report 2007*', Harvard University and University of California, Berkeley, p16

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