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**HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON EMPLOYMENT AND WORKPLACE RELATIONS
PAY EQUITY AND ASSOCIATED ISSUES RELATED TO INCREASING FEMALE
PARTICIPATION IN THE WORKFORCE**

**ACT GOVERNMENT SUBMISSION
SEPTEMBER 2008**

Introduction:

1. The ACT Government welcomes the opportunity to provide a submission to the House Standing Committee on Employment and Workplace Relations Inquiry into pay equity and associated issues related to increasing female participation in the workforce. In doing so, it seeks to draw attention to the need to improve information, monitoring and auditing of pay equity outcomes. It further describes public sector policies and provisions in the ACT that are supporting gender pay equity, as well as the ACT Public Service's relatively positive performance on pay equity.

2. It also details some of the current inadequacies in equal pay provisions within current Commonwealth law and argues for their reform.

3. The ACT Government, through the ACT Women's Plan (2004) recognises that "work needs to continue in removing the discriminatory barriers that currently result in more limited economic security opportunities existing for women more than men. This includes pay equity."¹

4. One of the key factors in addressing the barriers to women achieving economic independence is to develop a stronger understanding of why the gender pay equity gap continues to exist, despite decades of legislation and policy action on equal opportunity. This understanding can only be developed with robust, sector level data analysis.

¹ ACT Government *ACT Women's Plan* pp12-13 <http://www.women.act.gov.au/functions/actwomensplan.pdf>

ACT Female Workforce Characteristics and Data Needs:

5. In May 2008, average weekly full-time earnings of women in the ACT were 14% less than average weekly earnings for men in the ACT. The gender pay gap has been reduced by 3% since 2003, and by 11% since 1983, when this data series commenced.² This improvement in pay equity may reflect the ACT's high female workforce participation rate in comparison to the national rate and the jurisdiction's trend of higher than national average weekly earnings. The ACT has the highest rate of female labour force participation in the country (68.9%).³ The level of female workforce participation also indicates a strong job market in the ACT, with unemployment at a national low of 3 percent.⁴

6. While publicly available gender disaggregated data on average weekly earnings gives a broad overview of gender pay parity in the ACT, there is limited availability of data to guide evidence based policy development in addressing gender pay inequity. Issues of gender occupational segregation, workforce casualisation and access to family-friendly work conditions are critical components of the on-going gender pay equity debate, but detailed gender disaggregated data is scarce or unavailable. This has a particular impact in the ACT, where the population's relative advantage can hide significant disadvantage experienced by sections of the community.

7. Work undertaken by the Equal Opportunity for Women in the Workplace Agency (EOWA) in recent years has provided significant sector and gender disaggregated data on pay equity. This data, however, is not yet available at a State and Territory level, although discussions between Offices for Women across Australia and EOWA have commenced.

8. EOWA's work provides a clear best practice example of the strategies needed to address the continuing pay equity gap. The agency, in its mandated monitoring role, provides the impetus and support for employers with more than 100 employees to closely examine and address pay equity issues within their organisations. This example, along with the National Australia Bank's recent partnership with the Victorian Government and the Financial Sector Union (FSU) show that organisations willing to undertake pay equity auditing are able to focus more effectively on productive, equal opportunity

² ABS *Average Weekly Earnings* at <http://www.ausstats.abs.gov.au/ausstats/abs@archive.nsf/0/69557C2E80FB7412CA25744900171B2B>

³ ABS *Australian Labour Market Statistics* April 2008

⁴ ABS *Labour Force, Australia* April 2008

workplaces.

9. These examples address the role of employers in ensuring that indirect discrimination is addressed. However, it is important to note that the scope of EOWA is larger organisations, and a significant proportion of the female workforce is not covered by this reporting. Therefore, access to appropriate individual support and information is critical. Existing models such as Working Women's Centres could be extended across all jurisdictions to ensure that there is appropriate access to information to assist women, particularly vulnerable women in low-paid sectors.

Recommendations:

That the Commonwealth provide additional support for information gathering around pay equity outcomes, with particular regard to jurisdictional and regional data, as well as data for small and medium sized organisations.

That the Commonwealth consider extending such models as Working Women's Centres in the interests of ensuring access to information to assist women, particularly vulnerable women in low-paid sectors.

Pay Equity and Female Participation in the ACT Public Service:

10. According to the 2006-07 ACT Public Service Workforce Profile there were 18,263 employees in the ACT Public Service (ACTPS) with women comprising over two-thirds.

11. Amongst the primary occupations within the ACTPS, women outnumber men in all but information technology officers, general service officers, fire fighters, custodial officers and rangers.

12. These ratios are reversed for ACT Government executives, where approximately one-third are women. Those employees in the ACTPS earning more than \$100,000 (the category immediately below the executive) are evenly divided between men and women. The relative number of women in this group has been increasing slightly over the last three years.

13. There are no discriminatory impediments to the employment of women in the ACTPS. There are, nevertheless, some differences between the employment patterns of men and women in the ACT Government, and their salaries. These differences are primarily due to higher numbers of women working part-time. When salaries are converted to a full time equivalent, and weighted to counter the overall greater number of women employed in the ACTPS, the average salary of a man is \$67,068 and a woman \$64,368, with the difference being due to a slightly higher proportion of the total number of men being in higher paid positions, relative to the proportion of the total number of women in equivalent positions.

14. However, the proportion of female ACTPS employees in the \$80-90,000 salary category has been increasing at over twice the rate for their male counterparts between 2005-6 and 2007-8, while the proportion of female employees in the \$70-80,000 category has been increasing at over seven times the rate for their male counterparts over the same period.

15. Should this trend continue, it is likely that the average salary of women employed in the ACTPS will overtake that of the average salary paid to men.

16. Unpublished research from the ANU on family friendliness, job quality and wellbeing links wellbeing to perceptions of job quality, including perceived job control, security, work hour flexibility and access to paid family-related leave.

17. The 2008 Australian Work and Life Index⁵, outlines seven issues of significance open to institutions and their managers to effect with regard to the job quality of their employees.

18. These issues are:

- Good first line supervisory and general workplace support for employees around work-life issues;
- Avoiding work overload;

⁵ Skinner, N., Pocock, B. (2008) *Work, Life and Workplace Culture: The Australian Work and Life Index 2008*, Centre for Work and Life, Adelaide.

- Avoiding long hours;
- Avoiding unsocial working hours;
- Providing permanent rather than casual employment;
- Providing employee-centred flexibility (especially measures that give workers some say over when they work and to adjust work time to fit their needs); and
- Providing the means whereby workers can get a good fit between their actual and preferred hours.

19. ACT Government collective agreements contain measures to limit the potential for work overload and long hours. These collective agreements also emphasise permanent over casual employment and provide a range of measures designed to deliver employee-centred flexibility and to maximise the fit between actual and preferred hours.

20. Changes made in the most recent round of collective agreement negotiations include:

- An extension to purchased leave, such that up to 12 weeks per year can be purchased;
- A 100% increase in bonding leave (for the partners of new parents) from five working days to ten. This increase is accessed through drawing down existing personal leave credits;
- The ability to cash-out 2 weeks recreation leave within each 12-month period. This is particularly advantageous if the individual has a high leave balance;
- An increase in the vacation child care program from \$20 per day to \$40 per day to reflect increases in child care programs;
- Provisions for the reduction of excess annual leave credits where these are greater than 2.5 years have been significantly strengthened to prevent individuals working for long periods without using annual leave;
- Officers returning from paid maternity, paid primary care giver or unpaid parental leave after the birth or adoption of their child have had entitlements to permanent part-time employment increased to three years, with a cap of seven years where multiple births are involved;
- The ability to modify conditions of service for individuals, where this would assist attraction and/or retention. This provides an opportunity, where necessary, to make significant changes to conditions of service to suit exceptional circumstances; and

- The recent introduction of Grandparental leave with up to 52 weeks leave without pay to be granted over a three year period to permanent full or part time staff and to long-term temporary staff who are immediate family grandparents, step-grandparents, grandparents through adoption or through their children taking parental responsibility under a law of a State or Territory.

21. Regardless of the attractiveness of conditions of service, it is vital that the workplace culture supports issues around improved female participation in the workforce.

22. The ACT Government is implementing a range of initiatives designed to positively influence management culture in the ACT Government. These measures include:

- Executive Leadership Development – to support the ongoing development of our Senior Executives
- Executive feeder group development – to develop the next generation of leaders
- First time manager training – to assist new managers to be effective
- Performance feedback training – to support good feedback to staff
- A trial of bulk recruitment to improve the size and quality of the pool of applicants
- Promotion of the ACTPS as an employer through promoting the benefits to individuals of working in the ACTPS.

23. Additionally, the current round of ACT Government collective agreements contains a number of provisions designed to exert a positive influence over the working culture of the ACT Government. Some of these initiatives are structural, and impact workplace culture in an indirect manner, while others are more directly targeted at encouraging, or discouraging specific behaviours.

24. These provisions include:

- An important provision in support of work-life balance is a clause that provides that operational reasons are the only justification for refusing applications for work-life balance applications, and reasons for refusing applications are to be provided in writing if requested;

- Discipline and related provisions have been reviewed and simplified, particularly to remove ambiguous situations where discipline provisions are used where other, less coercive, mechanisms may be more appropriate; and
- Provisions relating to the investigation of bullying and harassment have been strengthened and more strongly linked to the discipline procedures.

25. It is considered that these provisions in combination with the ACT Government's efforts to support an improved management culture and promote an appropriate work/life balance have been either directly or indirectly at play in supporting the currently high levels of female participation in the ACTPS and the trends towards greater equity in pay outcomes.

Recommendation:

That the Commonwealth consider actively promoting workplace reforms that support work/life balance and flexible employment practices in the interest of directly and indirectly fostering increased female workforce participation.

Equal pay provisions within Commonwealth legislation

26. The current pay equity provisions in the Commonwealth Workplace Relations Act 1996 do not offer a timely or effective remedy to gender pay inequity. There are three central problems with the definition in the Workplace Relations Act 1996. The first is that the definition of pay equity is too narrow; the second is that the inability of the Australian Industrial Relations Commission to make an order to raise the minimum wage undermines the effectiveness of any equal remuneration orders and the third is that equal remuneration orders cannot be made retrospectively.

27. The definition in section 623 of the Workplace Relations Act 1996 refers only to equal pay for work of equal value and does not include the more expansive definition of equal pay for work of equal or comparative value that other jurisdictions such as Queensland include (see section 59 Industrial Relations Act 1999 (Qld)). By narrowing the scope of the definition it is more difficult to make a case

that pay is inequitable amongst comparable industries. It is partly for this reason that the state jurisdictions have a higher number of gender pay equity cases than the Commonwealth jurisdiction.

28. Section 622 of the Workplace Relations Act 1996 establishes that the Commission cannot deal with an application for equal pay if the employees who would be covered by an order and the group they would be compared to are 'entitled to a rate of pay that is equal to the applicable guaranteed rate of pay under the provisions of the Australian Fair Pay and Conditions Standard'. In effect the Commission cannot consider an equity issue if there is a possibility an order could raise the minimum rate of pay. This restriction hinders the effectiveness of this power and means that issues other than fairness and equity are central to decisions about pay equity in the Commonwealth jurisdiction. Other jurisdictions do not place this restriction on pay equity considerations (eg. section 60(2) of the Industrial Relations Act 1999 (Qld) enables orders to raise the minimum rate of pay when making an order for equal pay for work of equal remuneration or value).

29. Section 629 Workplace Relations Act 1996 prevents the Commission from making equal remuneration orders retrospectively. This acts as a disincentive for applications in the Commonwealth jurisdiction as applicants must wait for the entire process to be concluded before receiving any relief.

Recommendation:

That the Commonwealth amend the Workplace Relations Act 1996 to include equal pay for work of equal *or comparable* value in Section 623 and that the Commission be able to consider applications and make retrospectively orders without regard to the minimum rate of pay.