



**Comment on the HOR Employment
and Workplace Relations Committee
inquiry into**

**Pay Equity and Associated Issues
relating to Increasing Female
Participation in the Workforce**

August 2008.



ACTCOSS and Women's Centre for Health Matters Inc (WCHM) acknowledge that Canberra is built on the traditional lands of the Ngunnawal people. We pay our respects to their elders and recognise the displacement and disadvantage they have suffered since European settlement. WCHM & ACTCOSS celebrate the Ngunnawal's living culture and valuable contribution to the ACT community.

About ACTCOSS

The ACT Council of Social Service Inc. (ACTCOSS) is the peak representative body for not-for-profit community organisations, people living with disadvantage, and low-income citizens of the Territory. ACTCOSS is a member of the nationwide COSS network, made up of each of the state Councils and the national body, the Australian Council of Social Service (ACOSS).

ACTCOSS' objectives are representation of people living with disadvantage, the promotion of equitable social policy, and the development of a dynamic, collaborative and sustainable community sector.

The membership of the Council includes the majority of community based service providers in the social welfare area, a range of community associations and networks, self-help and consumer groups and interested individuals.

ACTCOSS receives funding from the Community Services Program (CSP) which is funded by the ACT Government.

About WCHM

WCHM is a not for profit community organisation working to improve the health and wellbeing of women in the ACT and region, with a focus on women who experience disadvantage.

WCHMs three key focus areas are:

1. **Unmet need:** identifying the health and wellbeing needs of women that are not fully understood or are unmet or inadequately responded to by current policy and service responses, and using this evidence to inform practice and influence policy over time.
2. **Social isolation and marginalisation:** better understanding the impact of isolation and marginalisation on specific populations of women; and working to inform responses that will promote authentic social connectedness.
3. **Increasing women's access to gender-sensitive health and wellbeing information:** in a manner that supports women in making informed health and wellbeing choices.

WCHM receives funding from ACT Health (Community and Health Policy division).

ACTCOSS and WCHM advise that this document may be publicly distributed, including by placing a copy on our websites.

Introduction

Gender wage inequality is a significant issue, contributing to poverty among women in both the long term and the short term. We commend the Employment and Workplace Relations Committee and the Federal Minister for Employment and Workplace Relations for opening this important issue up for public consultation.

In general, the gender wage gap between women and men exists for a number of reasons, including:

- Women hold lower positions and work in lower paying fields than men on average;
- A higher percentage of women work part-time;
- Female dominated occupations are more undervalued than male-dominated occupations;
- The lower union membership of women; and
- Women tend to work in smaller workplaces and have less bargaining power than men.

We will discuss two aspects of the pay equity issue. First, women's work is undervalued. Second, women have lower participation in the workforce. Women in the workforce, particularly those on low incomes or in casual or part-time employment, face disadvantage and inequity in a number of forms, not limited to the narrow issue of the pay gap or equal remuneration. As a result, this submission will comment on possible reforms and issues in this area, as well as areas of superannuation and training as detailed in the terms of reference. It will go on to consider problems in relation to women's engagement with the workplace and the difficulties women, particularly in the ACT, face in re-entering or entering the workforce for the first time.

Disadvantage experienced by women within the workforce

1. The adequacy of current data to reliably monitor employment changes that may impact on pay equality issues;

ACTCOSS and WCHM have repeatedly called for the ACT Government to collect and make available gender disaggregated data on a range of topics, including training, employment and wages.

We note that the Window on Women (also known as the Women's Data Warehouse) has been decommissioned as part of a review of the Office for Women's website. Although we acknowledge the need for ongoing review, the website should be reinstated as soon as possible, or the data be made available elsewhere. It is difficult to comment on adequacy or gaps without access to this data.

2. The need for education and information among employers, employees and trade unions in relation to pay equity issues;

The *ACT Women's Plan* acknowledges the need for women re-entering the workforce or experiencing disadvantage to be provided with support, including training in financial, management and technological skills. Also recognised is the need for strategies that promote flexible and diverse workplaces. Indicators of success include the participation of women across a greater range of employment fields and a decrease in the gap between men and women's full time average weekly earnings. Whilst we acknowledge the support of the ACT Government and the Office for Women, we note that the wage gap is not decreasing, and further measures are required to tackle the barriers faced by women.

Women employees and young women require more education about their opportunities for participation in the workforce. It is arguable that even before women enter the workforce their aspirations are shaped by societal factors, including attitudes of parents, peers, schools and the media. For example, research has shown that the more TV children watch, the more accepting they are of occupational gender stereotypes.¹ Similarly, anticipated family responsibilities can shape women's decisions about the amount and kind of investment in training and education. Because women expect to spend less time in the workforce than men, it is less profitable for women to invest in market-orientated skills.

It is important to note that these stereotypes and attitudes are changing, with similar numbers of males and females now attending ACT universities in 2006,² and more females than males enrolled in vocational education and training (VET) in the ACT in 2006.³ However, further education and greater support for women's decisions to combine work and family is essential.

Canada has had some success with the introduction of targeted study programs, providing grants and assistance to disadvantaged part-time students (particularly single mothers and women with dependants) and women in certain traditionally male disciplines.⁴ Similarly, the British Columbian program Women in Trades and Technology has successfully supplied training to government and industry in recruiting and retaining women in trades and developed guidelines for trade-specific training for women.⁵ We note that Queensland has recently closed a funding application round for programs supporting the participation of women in non-traditional employment and trades⁶ but such initiatives do not appear

¹ Hilary M Lips, *Blaming Women's Choices for the Gender Pay Gap*, Radford University, available at <http://www.womensmedia.com/new/Lips-Hilary-blaming-gender-pay-gap.shtml>.

² ABS, *ACT in Focus* (2007), 83.

³ *Ibid*, 81.

⁴ Nitya Iyer, Report on the Taskforce on Pay Equity, *Working Through the Wage Gap*, 2002, British Columbia, 39.

⁵ *Ibid*, 40.

⁶ See Queensland Office for Women, <http://www.women.qld.gov.au/about-us/grants/documents/women-in-trades-guidelines.pdf>

to be available in all jurisdictions. We advocate for the expansion of funding and support programs for women experiencing disadvantage and studying and working in traditionally male disciplines.

There is also a need for more information and education for women in relation to superannuation, as will be discussed below. Briefly, findings reveal that most women display low levels of commitment and often forgo opportunities to make long-term savings due to a disinclination to sacrifice current spending for future savings, as well as a lack of surplus discretionary income.⁷ Strategies which could address women's continuing disadvantages in relation to superannuation and retirement savings include:

- More education and incentives about saving, superannuation and investment;
- Assisting women to maximize what superannuation savings they do have; and
- Providing an increasing role for women in the corporate governance of Australia's superannuation and retirement income system.⁸

3. Current structural arrangements in the negotiation of wages that may impact disproportionately on women;

There are a number of barriers to employees taking up workplace or industrial entitlements to assist them to balance their paid work and family responsibilities, including:

- Employees perceive a risk to their job security or career progression if they avail themselves of family-friendly work practices; and
- Management culture does not support using family-friendly work practices.⁹

Research has shown that the pay gap in countries with centralised pay systems is far less than in countries with deregulated and decentralised wage bargaining like the United States largely because women are likely to do worse than men if required to individually bargain with their employers. For example, a 2004 survey on Australian Workplace Agreements (AWAs) conducted for the Office of the Employment Advocate found evidence that AWAs were being used less to enhance work and family balance than to extend working hours so that enterprises' trading hours could be increased.¹⁰

The recent weakening of the awards system disadvantages more women than it does men. Similarly, the award system protects the wages of proportionally more women given men's greater engagement in enterprise

⁷ Association of Superannuation Funds of Australia Ltd Research Centre, *Women and Superannuation*, 2001.

⁸ Diana Olsberg, *Women and Superannuation Still Ms..ing Out*, *Journal of Australian Political Economy* 53, 2006, 173.

⁹ HREOC, *Striking the Balance*, 2004, 94.

¹⁰ Human Rights and Equal Opportunity Commission (HREOC), *Striking the Balance*, 2004, 91.

bargaining. Erosion of the award system also diminishes the capacity for centralised determinations to improve the work and family balance, which is a persistent drag on women's lifetime earnings. Although the Government has indicated they will roll back WorkChoices, through the "Forward with Fairness" process from 2010, we require assurance that the award modernisation process will not further impact the disadvantaged status of women.

Case Study: Canadian *Employment Equity Act*

We would like to highlight the Canadian initiative, the *Employment Equity Act*, applying to federally regulated private sector employers of more than 100 employees, as well as most public sector employers. The Act places an obligation on employers to eliminate employment inequity by:

1. Identifying and eliminating employment barriers that result from the employer's policies and practices (where they are not authorised by law);
2. Instituting positive policies and practices to ensure that people in designated groups (Indigenous people, people with disabilities, women and people in visible minorities) are represented within each group in the employer's workforce in numbers that reflect their representation in the Canadian workforce;
3. Developing an employment equity plan including timelines for achieving the desired representation of designated groups; and
4. Filing annual public employment equity records, reporting on how they are progressing towards employment equity.¹¹

The Canadian Human Rights Commission is responsible for ensuring compliance with the Act, but the staff in the Commission generally see their role as assisting employers to comply with their obligations, rather than taking proceedings against them.

We note that there has been considerable controversy in relation to a number of areas of the Act (particularly the term 'visible minorities') and that its application is very limited, with the 2006 review of the Act finding that only about 6% of the Canadian population come under the Act.¹² However, it is a positive example of affirmative action in the area of workplace inequity that has operated over a long time period and can be looked to for guidance.

4. The adequacy of recent and current remuneration provisions in state and federal workplace relations legislation;

National and state-based discrimination law contain equal remuneration principles but they only provide a nominal right to equal pay for work of equal value because they are based on a test of sex discrimination: applicants need to demonstrate remuneration had been established with

¹¹ Nitya Iyer, Report on the Taskforce on Pay Equity, *Working Through the Wage Gap*, 2002, British Columbia, 33.

¹² Human Resources and Skills Development Canada, *Employment Equity Act Review 2001*, available at <http://www.hrsdc.gc.ca/en/lp/lo/lswewe/review/index-we.shtml>

discrimination based on sex, requiring a test against a male comparator group. As a result the sections are difficult to apply in industries with a predominantly female workforce, as a male comparator group is not readily available.

This test fails to address gender pay inequity, which is generally systemic and not necessarily a result of overt discrimination. The models can effectively only be accessed by individual complainants and are unable to deal effectively with complaints of discrimination on behalf of a large collective group of women.¹³ Thus the provisions cannot adequately address the issue of the lower earnings that women receive from their qualifications and experience in comparison to men, and cannot adequately address the issue of undervaluation of the work traditionally performed by women.¹⁴

ACTCOSS and WCHM are of the opinion that evaluating whether work in female dominated industries is undervalued could be assisted by comparison with a male group, but this should not be a requirement.

The Queensland and NSW Tribunals have in the past rejected the limited test for equal remuneration, expressing opinions on the limitations of a test that utilises discrimination as the threshold test (thereby invoking the need for a male comparator group, as discussed above). The equal remuneration principles supported by both the NSW and Queensland Tribunals utilise undervaluation rather than discrimination as the basis for the test. Under WorkChoices Legislation, the Federal Government has sought to 'cover the field' meaning they have effectively taken sole control over the entire area of workplace relations. As a result the state and territory tribunals have limited authority to make such decisions and the undervaluation tests will no longer be applied.

We recommend that a review of the equal remuneration test be undertaken and consideration given to the inclusion of a test for undervaluation, as described in the NSW Pay Equity Inquiry and the *LHMU v the Australian Dental Association case*.¹⁵

5. 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

The *European Participation in Organisational Change* survey of 10 countries found that about 25% of workplaces practising group work deny women equal access to direct workplace participation in proportion to their

¹³ URCOT for Industrial Relations Victoria, *Pay Equity: How to address the Gender Gap*, February 2005, 57.

¹⁴ *Submission to Workplace Relations Amendment Bill*, Michael Lyons and Meg Smith, Employment Relations Group, School of Management. UWS.

¹⁵ *(Queensland Branch) Union of Employees*, [2005] QIRComm 139.

share of the workforce.¹⁶ Further, workplaces with a significant part time workforce were less likely to provide information to employees than were workplaces with fewer part time employees. Part time workers were much less likely to be consulted by higher level managers and unions or through meetings on workplace change, and were more likely to rely on information from fellow workers than full-time staff. This is particularly relevant to women as 35% of women employed in the ACT in 2006-07 worked part-time and approximately 70% of the part time workforce were women.¹⁷

Workplaces with significant proportions of part-time staff were more likely to rely upon more informal, unstructured mechanisms for sharing information, which it was suggested might be considered a less substantial or less reliable means of information flow.

80% of managers with significant proportions of part-time staff claimed special measures were taken to pass information on, but only 40% of all workplaces held meetings at times that enabled the attendance of all employees. Almost half the workforce surveyed considered they did not have a fair chance for a say in the process of workplace change with half of part-time staff offering their actual employment status as a reason for this.

There is a trend among women towards disengagement with their workplaces. Regardless of whether they were employed full or part-time, women were considerably less likely to report being consulted by senior managers and unions regarding workplace change and more likely than males to rely upon fellow workers for this information.

In Germany, similar problems have been addressed with reforms to the *Works Constitution Act 2001*, which guarantee equal co-determination rights for part time, casual and temporary agency workers and aims to increase the proportion of female councillors.¹⁸ Whilst we are not necessarily suggesting similar legislation is necessary in Australia, considerable resources are required in the promotion and education of employers and employees on the needs of part time workers and women with family responsibilities, and strategies for promoting the participation of women in the workplace. These could conceivably include training programs, best practice guidelines for establishing internal committees and working groups and incentives for implementing family friendly practices.

6. The need for further reform to address pay equity in Australia

¹⁶ Raymond Markey & Ann Hodgkinson, *How Employment Status Genders Access to Employee Participation in Australian Workplaces*, International Employment Relations Review 9, 2003, 115.

¹⁷ ABS, *ACT in Focus*, 2007, 132.

¹⁸ Raymond Markey & Ann Hodgkinson, *How Employment Status Genders Access to Employee Participation in Australian Workplaces*, International Employment Relations Review 9, 2003, 114.

Superannuation

A NATSEM survey¹⁹ in 2004 showed 30% of women aged 45-59 have no superannuation at all. A woman's average superannuation remains at less than \$8000. Men on average have double that of women in the same age group. Large numbers of women will continue to retire from the paid workforce with insufficient savings to ensure an adequate income in later life.

The reason women generally have inadequate retirement savings is that Australia's system of occupation linked superannuation disadvantages female employees and women who are not in the paid labour force. Compulsory employer contributions are dependent upon an individual employee's paid employment profile and wage level. Recent reforms have been particularly targeted at high income earners and their benefits are dependant upon an employee having surplus income, ignoring the needs of women with low or no incomes.

Women's ability to accumulate sufficient retirement savings is compromised by interruptions to paid employment due to child bearing, child rearing and caring responsibilities.²⁰

Women's chances of accumulating good superannuation reserves are often low because they experience more broken work patterns, spend fewer years in full time paid work, earn lower wages and have greater responsibility for unpaid work than their male counterparts.²¹

It is important to ensure that workplaces adopt family friendly policies such as:

- Flexible working hours;
- Part-time work;
- Job-sharing;
- Home based work;
- Career breaks;
- Leave for people who need to care for family members; and
- Paid maternity and paternity leave.²²

Family friendly policies could lead to an increase in female workforce participation which will result in female employees accumulating more adequate superannuation savings, as well as lessening the pay gap. Similar thought should be given to entitling women to continue receiving super contributions while they are on maternity leave, ensuring continuity of savings whilst they are on breaks from the workforce.

¹⁹ Elizabeth Taylor & Rachel Lloyd, *Superannuation- The Right Balance*, November 2004.

²⁰ Diana Olsberg, *Women and Superannuation Still Ms..ing Out*, Journal of Australian Political Economy 53, 2006 at 164.

²¹ Professor Rhonda Sharp, Hawke Research Institute, University of South Australia, Media Release: *Women miss out on Retirement Super*, April 10 2008.

²² Diana Olsberg, *Women and Superannuation Still Ms..ing Out*, Journal of Australian Political Economy 53, 2006 at 174.

However, whilst increases in paid workforce participation will continue to assist to accumulate some income for retirement,²³ there is a need for further superannuation reform to address the needs of women.

For example, women whose total earnings will exceed \$450 per month, and work for several different employers, with no job individually reaching the \$450 benchmark. In these circumstances, no superannuation is received. Similarly, women who are not in the paid workforce or who are registered as unemployed or on government benefits are not entitled to superannuation, and most have no independent retirement savings at all.

ACTCOSS and WCHM recommend that where women are working a number of different jobs, consideration should be given to mechanisms for looking at a woman's total monthly earnings, rather than the earnings from individual employers.

Disadvantage in the area of superannuation is particularly acute for women from culturally and linguistically diverse (CALD) backgrounds or Indigenous women. Unemployment rates are higher for women from a CALD background and those in employment are more likely to work in manual, unskilled job with fewer entitlements than other occupations. The likelihood of these women receiving any superannuation benefit is very low.²⁴ Aboriginal women also suffer from underemployment and unemployment and rarely have the opportunity to accumulate superannuation. Initiatives such as the ASIC factsheet *Super and Us Mob*²⁵ are positive but we suggest more should be done to ensure Indigenous people and people from a CALD background are not disadvantaged in building retirement savings.

Barriers to women entering the workforce

Women continue to face barriers in attaining equal pay, participation and benefits in the workforce. They also face substantial barriers in entering the workforce at all, after taking time out for child bearing or family responsibilities or as a result of their disadvantaged status, as illustrated in the following extract from the WCHM report *Marginalised and Isolated Women in the ACT: Risk, prevalence, and service provision*:²⁶

In 2002, NATSEM released a report that examined the extent of financial disadvantage in ACT, and the characteristics of financially disadvantaged households. This report estimated that 8.6% or 24,446 ACT residents in 1999 were living in poverty, a figure comprised of

²³ Diana Olsberg, *Women and Superannuation Still Missing Out*, Journal of Australian Political Economy 53, 2006 at 163.

²⁴ Ibid

²⁵ Australian Security and Investments Commission, *Super and Us Mob*, [http://fido.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Super&UsMob.pdf/\\$file/Super&UsMob.pdf](http://fido.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Super&UsMob.pdf/$file/Super&UsMob.pdf).

²⁶ Maslen, Sarah *Marginalised and Isolated Women in the ACT: Risk, prevalence, and service provision* Women's Centre for Health Matters Inc 2008

15,177 (7.1%) adults and 9,276 (11.2%) children.²⁷ According to this report, financially disadvantaged Canberrans are likely to be young, in receipt of government cash benefits, residing in public housing, part of a sole parent or single person household, not in the labour force or unemployed, and they are likely to be women.²⁸ Specifically, the report indicates that 56.9% of the ACT population who experience poverty are women.²⁹ This figure equates to approximately 4.9% or 13,910 women in the ACT who experience poverty.

NATSEM also reported that ACT women are more likely to head low-income households than men, and further, women were significantly less likely to head a household in any other quintile.³⁰ For 2006, women headed 87% of one-parent families in Australia, leaving women and their families at a significant risk of marginalisation.³¹ For the same year, lone-mother families accounted for 18.7% of the total families in the ACT, which is higher than the national average of 18.0%.³² The ABS reported that statistically one-parent families are at higher risk of disadvantage in terms of income, employment, housing, and social participation.³³ With this in mind, single mothers in the ACT and their families are at high risk of poverty and the marginalisation and isolation that can result.

One of the primary reasons women are vulnerable to poverty is their employment status. Welfare states like Australia reinforce women's economic dependency and vulnerability to poverty through systems of women's unpaid labour.³⁴ Women are more likely to be employed part-time, their employment is more often in informal or lower-paying sectors, and they are significantly more likely to engage in unpaid labour as a result of their responsibilities within the household. In 2006, women comprised 47.8% of the total ACT labour force, had a participation rate of 67.2% (men's participation rate was 77.3%), and were twice as likely to be employed on a part-time basis, leaving them more susceptible to income poverty.³⁵

A key aspect of the feminisation of poverty is women's limited access to resources within the household. Most often poverty levels are measured using total household income, and it is assumed that the household's resources are equally shared. However, anecdotal research indicates that women are more likely to experience severe

²⁷ Anthea Bill, Rachel Lloyd, and Ann Harding, *Locating Poverty in the ACT*, (Canberra: The National Centre for Social and Economic Modelling, 2002), 1.

²⁸ *Ibid.*, 21.

²⁹ *Ibid.*, 22.

³⁰ Cassells, Vu, and McNamara, *Characteristics of Low Income ACT Households*, 30.

³¹ Australian Bureau of Statistics, *Australian Social Trends*, ABS Cat. No. 4102.0 (Canberra: Australian Bureau of Statistics, 2007), 49.

³² *Ibid.*, 37.

³³ *Ibid.*, 48.

³⁴ Julia O'Connor, Ann Shola Orloff, and Sheila Shaver, "Gendering Theories and Comparisons of Welfare States," in *States, Markets, Families: Gender, Liberalism, and Social Policy in Australia, Canada, Great Britain, and the United States* (Cambridge: Cambridge University Press, 1999), 25.

³⁵ Australian Bureau of Statistics, *Australian Social Trends*, 120.

poverty as a result of the unequal distribution of resources with the household.³⁶ Further, policies and services that aim to reduce poverty are more often targeted towards men, and as such, once women are experiencing poverty, they have less options of escape.³⁷

It is recommended that further research is undertaken into women's access to resources within the household in order to better understand the issues, the number of women affected, and to alleviate women's experience of poverty.

A major barrier for many vulnerable women (including but not limited to single mothers, women with mental health issues, women with disabilities, women from CALD backgrounds, and Indigenous women) in finding and keeping work is the rigidity of employment structures. In order to cater for individual physical and emotional cycles and needs, family responsibilities and community demands, flexibility within the workplace is essential. Amongst the practices that could support this flexibility are:

- Job sharing – in a flexible arrangement between two people who are able to juggle hours according to individual physical and emotional cycles and needs, family responsibilities and community demands;
- Peer support practices such as buddy systems, mentoring. An example of this is the support that is provided to newly graduated nurses;
- Provision of affordable accessible high quality child care – this would remove one of the stressors for many women;
- Flexible training options – recognising that many vulnerable women may have missed out on education and training opportunities; and
- Financial assistance for women returning to the workforce, such as the ACT Government Women's Return to Work Grants Program (2008).

Two case studies³⁸ illustrate the multiple issues faced by many vulnerable women that prevent them from gaining employment.

Case Study One

Mary is in her 30s. She had an accident when she was 20, whilst a university student, leaving her with physical disabilities and an on-going mental illness. Mary on most days is enthusiastic about life. She has been trying for the last 10 years to re-enter the workforce.

Mary does not on first impression present well – she is not concerned about colour coordination, and due to her poverty (she lives on a disability Support pension and is raising two children on her own) has a small aging wardrobe.

³⁶ Institute of Development Studies, *Briefing Paper on the 'Feminisation of Poverty'*, 1.

³⁷ Ibid, 6.

³⁸ These case studies are fictional but based on women known to us

Her honesty about her ongoing physical and mental health issues, and her child support needs, as well as her poor presentation, mean that Mary has not been able to find employment.

Case Scenario 2

Sally is a 32 year old mother of two children. Both children were removed from her care 6 years ago, due to Sally being sentenced to prison for possession of illicit substances and Centrelink fraud. Sally served an eight month sentence, and has since then desperately tried to get her children back.

Sally has jumped through many hoops over the years and made significant positive life changes. She has remained drug free, and has paid back the whole amount of money owed to Centrelink. She has been trying to secure paid employment for the last three years and completed a number of employment incentive courses, however it seems her past has permanently tarnished her opportunities. Sally presents well at interviews and is honest about her past, yet no one to date has been prepared to take her on or give her a go.

Due to constant knock backs Sally now suffers from depression and feels she is in a completely hopeless situation. No work, alienated from her children and seemingly no way out - she often questions for what purpose she has worked so hard on her personal issues, with frivolous external promises for a better life.

Conclusion

We emphasise the need for law reform in the areas of superannuation law and equal remuneration/discrimination provisions. We also note the need for government commitments to address:

- Systemic discrimination in the workforce;
- Gaps in the education of women, employers and the community in general; and
- Support for disadvantaged women in the workforce.

Initiatives to address these factors and promote family friendly workplace practices will not only work towards lessening the wage gap in Australia, but provide more opportunities for women to enter and remain in the workforce.