

Inquiry Secretary
House of Representatives Standing Committee on
Employment and Workplace Relations
Parliament House
Canberra ACT 2600

Inquiry into pay equity and associated issues related to increasing female participation in the workforce

The Finance Sector Union of Australia (FSU) welcomes the opportunity to contribute to this Inquiry.

The FSU represents 50,000 members employed in the finance sector across Australian banking, insurance, finance and the services to finance sub-sectors.

The finance sector has the highest gender pay gap of any industry. The most recent relevant statistics have women earning on average just 77% of the average male hourly rate of pay.¹

The reasons for the gender pay gap are complex, but in the finance sector there are several specific factors which contribute:

- The increasing reliance on performance based pay.
- A lack of transparent pay relativities between jobs.
- Employers using complex state and national market-based pay data.
- Inconsistent and unclear job evaluation systems.
- Privacy/Secrecy.

These features of our industry are consistent within the finance sector overseas, where the gender pay gap is also high relative to other industries. In the UK and Canada, unions and governments have taken steps to address the gender pay gap across industries. In New Zealand, the public sector is now subject to pay and employment equity reviews.

For the FSU, gender pay equity is a policy priority. Over the last 3 years, the Union has run a concerted campaign to bridge the gender pay gap, working with employers and state governments to overcome the lack of an effective legislative mechanism to address pay inequity.

This Submission will address the Inquiry's Terms of Reference with a particular focus on improved regulation to address the gender pay gap. We provide a key example of our work in the finance sector to illustrate our experience of trying to address the gender pay gap.

We request that the material attached in Appendix 1. to this Submission be kept confidential and not be published.

¹ *Employee Earnings and Hours*, Catalogue 6306.0, ABS, May 2006. See note at 2 below.

Finally, FSU is happy to appear at any public hearings before the Committee to elaborate on our Submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L Carter', with a stylized flourish at the end.

Leon Carter
National Secretary
8 October 2008

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

It is hard to raise awareness of the gender pay gap, particularly amongst younger workers in our industry; our members simply find it inconceivable that men and women can experience inequitable earnings more than 30 years after the Federal Equal Pay Cases. Most workers would not believe that any pay gap exists.

It's therefore important that any pay gap be clearly identified and its causes exposed, in order to educate employees and employers and of course set about bridging the gap. However one of the key barriers to addressing gender inequity in pay is the difficulty in isolating the *exact earnings gap*.

The most rigorous ABS data is based on *average hourly ordinary time earnings of full-time non-managerial employees*. This data allows for the fact that men generally work more hours than women, it is not influenced by overtime earnings, and it does not include high managerial salaries that can distort average wages.² At present this data is collected biennially and published at an industry level in *Employee, Earnings and Hours* (ABS cat. 6306). The data is extremely useful for promoting public awareness and debate on this subject, however the two year publication cycle does not align with many other economic indicators and allows the issue of the gender pay gap to 'fade' between editions.

ABS data on paid and unpaid overtime in the finance industry has also been very useful in understanding the dimensions of the pay gap. Analysis of 2003 ABS data suggested there was over a million hours of overtime worked each week in the finance sector; approximately 40% of these hours were unpaid.³ Unfortunately, changes to the ABS publication *Working Time Arrangements* (Cat. 6342.0) mean there is no longer national data on the number of hours of overtime worked. Data is collected on the number of males and females who work overtime but not the actual number of hours worked.

It is increasingly difficult to isolate earnings data and ensure fair comparisons in the finance sector due to the rise in performance payments/bonuses and commissions, as the industry becomes more competitive and emphasises sales of products, more than service to customers. This difficulty is compounded by the lack of objective work value criteria in the industry – the finance sector more or less bypassed the examination of skills based relativities which occurred as part of award restructuring in the late 1980s/early 1990s. It is therefore hard to objectively compare like with like jobs.

The FSU work with National Australia Bank (NAB) in conducting a gender pay audit was illustrative of this.

In 2006/07, FSU and NAB worked on a comprehensive pay equity audit across the organisation. The audit arose from the *NAB/FSU Enterprise Agreement 2006*, and

² For a fuller discussion of this measure, see *Australian Social Trends*, Catalogue 4102.0, ABS, 2005.

³ Finance Sector Union (FSU) 2005, *Workforce Report*, FSU. Melbourne.

Industrial Relations Victoria sponsored the project as a Victorian industry case study.⁴ Subsequent joint audits will be conducted at NAB over coming years to track progress against the project's recommendations.

The Report of the project rightly notes that pay equity "is not just a matter of pay". The cultural, recruitment and management practices of the organisation were intrinsic to the findings at NAB. However it was crucial that the parties to the project unpacked the range of earnings components of men and women in the same or similar jobs, in order to first establish any pay gaps.

The NAB project working group examined gender distribution across grades and by employment status. Once initial data had been examined, comprehensive pay data was run across areas which required further investigation for possible pay gaps; (an initial pay gap of 5% or more was identified as warranting further investigation).

The more detailed pay data included:

- Base salary and superannuation.
- A range of discretionary payments, incentives, bonuses etc.
- Shift allowances.
- Car and meal allowances.
- Overtime.

It was a complex and difficult task to determine when to capture the data, how to define 'pay' and how to make adjustments to take account of employment status. We were also required to identify differences between jobs and appropriate definitions of 'male-dominated' or 'female-dominated' jobs. In addition, the parties were unable to account for the vast amount of unpaid overtime worked by many low paid staff in our industry (particularly in female-dominated retail branches). Any fair and rigorous examination of pay should compensate for all overtime worked.

FSU offers this experience to demonstrate the complex range of issues which require consideration in practice, *at the workplace or industry level*. As finance sector employers rely more heavily on market data, these considerations will become more complex.

FSU submits that quantitative earnings data is only part of the story when examining the gender pay gap, (and this Submission will address this issue in more detail). Nevertheless, there is still a need for national and consistent earnings data which allows male and female hourly rates to be compared on a more regular basis.

Recommendation 1: *That the Inquiry recommend that the ABS collect industry specific data for 'average hourly ordinary time earnings of full-time non-managerial*

⁴ See *Putting Pay Equity into Practice: Pay Equity and the Productive Workplace. A case study of the NAB/FSU pay equity audit*, Industrial Relations Victoria, 2007.

employees' on an annual basis.

Recommendation 2: *That the Committee recommend that the ABS collect the number of hours of overtime worked by industry, gender and paid/unpaid overtime.*

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

The various State government Inquiries into Pay Equity over the past decade or so have demonstrated the need for education amongst the parties to industrial arrangements around this issue. One of the positive outcomes of these inquiries has been the cooperation between employers, employees and unions in considering how to address the gender pay gap.

Industrial Relations Victoria should be commended for seeking positive examples of industry partnerships around pay equity, and in the case of the finance sector, sponsoring and promoting the FSU/NAB Pay Equity audit.

The published case study of the NAB audit emphasised the benefits that the project received from the good will and genuine cooperation of the parties. The project was characterised by:

- Genuine buy-in from senior management at NAB.
- A Steering Committee which included FSU members as well as full-time union officials and NAB management.
- The examination of qualitative data via focus groups of managers and staff in key areas.
- Sponsorship of each of the project recommendations by senior NAB Executive Committee members into the future.

The NAB focus groups were telling in terms of the reactions from employees to the idea that earnings may not be equal. The range of business and cultural factors impacting on earnings largely emerged from the focus groups. In turn the focus groups had employees thinking about their career paths, hours of work, entry level wage rates, and employment status and so on.

Recommendation 3: The Sex Discrimination Unit of the Human Rights and Equal Opportunity Commission should be asked to conduct a broad reaching education campaign around pay equity, aimed at employers, employees and the community.

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

The new Government's transitional Workplace Relations legislation (*Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008*) has seen some improvement in the prospects for gender pay equity. Two key improvements are the scrapping of Australian Workplace Agreements and the re-introduction of a comprehensive no disadvantage test. Both of these initiatives will serve to broaden the range of workplace conditions available to women workers and support access to greater wage increases via collective bargaining. The safety net for low paid workers will be more comprehensive, and this is positive for the many female workers in our industry working in small finance companies or credit unions, who are reliant on awards for their wages and conditions⁵.

It is our submission however that some aspects of the changes are problematic.

As mentioned earlier, finance sector awards do not have comprehensive skills based classification structures in place. One of the recent changes to the Workplace Relations Act is a total overhaul of awards via the award modernisation process and the creation of new modern awards which are effective from 1 January 2010. Under the legislation a modern award may include skills based classifications and career structures. Currently the finance sector has several enterprise awards in banking, an insurance industry and credit unions award and various other finance enterprise awards. Under the Government's legislation the scope of the modern industry awards is expected to be quite broad, with new awards replacing a large number of Federal Awards and Notional Agreements Preserving State Awards (NAPSAs).

Given the breadth of the finance industry and the range of occupations that come within it, the FSU has concerns to ensure that a comprehensive skills based classification structure will be developed which reflects the whole of the industry and includes fair and objective relativities between jobs. Female workers in our industry who are reliant on award rates of pay cannot in our view rely on the award modernisation process to address the gender pay gap. Indeed there is a likelihood that they may be worse off. The award modernisation process has the potential to lead to a reduction in wages and conditions for workers as it involves a reduction in the number of awards, and a rationalisation of employment conditions. The fact that the new awards will only be reviewed every 4 years could add to any emerging inequities.

Another potential problem with the new legislation is the model Enterprise Flexibility clauses to go in to the new awards. The FSU submits that the potential for problems with this provision are akin to those experienced via AWAs. An employer and an *individual* employee may agree to vary the terms of the award as they apply to their circumstances, in relation to:

- Arrangements for when work is performed;

⁵ The *Employee Earnings and Hours*, Catalogue 6306.0, May 2006 estimates the percentage of finance and insurance staff reliant on awards at 5.1%. However, FSU believes that the ABS data collection method for this survey is flawed as it asks survey participants the "main way" in which their wages are set (see Explanatory Notes 24-26). We estimate the figure to be closer to 20% of all employees in finance, insurance and services to finance and insurance sub-industries. (roughly 80,000 employees).

- Overtime rates;
- Penalty rates;
- Allowances; and
- Leave loading.⁶

It is the FSU view that for those workers reliant on award wages, these provisions are dangerous. Women workers with family responsibilities may be more likely to pursue such an agreement, and despite safeguards, trade away their entitlements over time in the name of ‘flexibility’ in their work and family life. We are particularly concerned for part-time workers in our industry, the vast majority of whom are women.⁷ If women avail themselves of these flexibility arrangements, and in particular choose to annualise overtime or penalty rates, they could find themselves working longer and less predictable hours in order to achieve a decent income. Again, this could serve to increase the gender pay gap.

In our view – and as evidence consistently shows, women are better off in terms of wages if their wages are set by a collective enterprise agreement.⁸ In our industry, discretionary pay is increasing and women wishing to move into higher paid roles must be prepared for all or some of their pay increases to be based on performance. Annual wage increases tied to the cost of living and guaranteed through collective bargaining, are the key method by which women can hope to bridge the gender pay gap.

Some of the arrangements available through enterprise flexibility arrangements could prevent women from accessing higher status and higher paid jobs and therefore compound pay inequities. Our experience at NAB drew out both of these issues in the job roles where a significant pay gap was found.⁹ Employers need to think about how jobs are designed and address barriers to women entering more senior roles. The availability of flexible working arrangements is a positive thing, but if we ask women to vary their entitlements without considering systemic or cultural factors impeding their working lives, we are only addressing part of the issue. If women are not fully informed about their choices, they stand to bear much of the onus for flexibility and the systemic barriers to accessing higher paid roles may not be challenged.

FSU is supportive of the Government’s change to allow the facilitation of multi-employer bargaining. This will assist in broadening collective bargaining and potentially provide access to better wage outcomes for more workers, including women. The ability for workers to compel their employer to bargain in good faith, if the majority agree, is also a positive step forward for collective bargaining and pay equity.

⁶ See *Request Under Section 576C(1) – Award Modernisation*, Consolidated Version @ paras. 10 & 11 and Decision of Full Bench of the Australian Industrial Relations Commission, *Award Modernisation*, 20 June 2008, [2008] AIRCFB 550.

⁷ At August quarter, 2007, 78.5% of all part-time workers in the finance sector were women. *Finance & Insurance by Sex, Status in Employment*, (unpublished data), August 2007.

⁸ See *Employee Earnings and Hours, Australia*, Catalogue 6306.0, May 2006.

⁹ Industrial Relations Victoria, *op.cit.*, 2007.

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

The new Rudd Government has not proposed to amend the equal remuneration provisions of the Federal Workplace Relations Act. This is disappointing as the FSU has long been concerned about the difficulty in running work value or other cases to address pay inequity under the current provisions.

The initiative of several state governments in undertaking Pay Equity Inquiries and amending their legislation in recent years, was a positive development for workers under state industrial relations systems. Given the limitations of our industry's pay systems, FSU is particularly attracted to the work evaluation approach taken by the Queensland Government. Such an approach can help 'unpack' the range of assumptions behind female dominated jobs.

We submit that an equivalent mechanism is needed in the Federal sphere.

We are not sure how the Government proposes to apply the principle of 'equal remuneration for work of equal value' *in practice*, via the powers of Fair Work Australia.

We do know that there will be limited capacity for the Australian Industrial Relations Commission or Fair Work Australia in future, to review award wages. The Commission is required to have regard to:

- the needs of the low paid;
- prevent and eliminate discrimination on certain grounds, including sex;
- promote the principles of equal remuneration for work of equal value, and
- consider the minimum wage decisions of the Australian Fair Pay Commission

as part of its Award modernisation process [Part 10A, Division 2, s.576B].

However, there is no certainty around *how* the Commission or Fair Work Australia will be obliged to consider equal pay in adjusting minimum wages. Will they be obliged to collect and consider gender based pay data? Will they be obliged to conduct work value investigations where requested? The Commission/Fair Work Australia's ability in –principle to apply equal pay provisions is meaningless if their capacity to make or amend awards is limited. Further, if the only form of dispute settling procedure (DSP) available to award-dependent workers is to be found in the Model DSP, women workers reliant on award wages will be impeded from progressing individual or collective disputes to resolution. In its current form the Model DSP would make it highly unlikely that women workers could achieve a positive outcome from a dispute around award wages or the application of

problematic skills based classification structures. [Part 10A, Division 2, s.576J(1(j))].¹⁰

Recommendation 4: *The Government's proposed Fair Work Australia be required to establish a specialist unit to develop and monitor mechanisms for achieving pay equity.*

Recommendation 5: *That the Government investigate the most effective means for making pay equity claims, including allowing for individual complaints within the industrial jurisdiction.*

¹⁰ See model incorporated into various industry Exposure Drafts issued by the Full Bench of the Australian Industrial Relations Commission, in accordance with *Statement of the Australian Industrial Relations Commission, Award Modernisation*, [2008] AIRCFB 717, @ [19], 12 September 2008.

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.

Finance sector employers pride themselves on their public reputation for being ‘family friendly’ employers. This is evidenced by several awards or commendations from the Equal Opportunity for Women in the Workplace Agency (EOWA) over recent years, particularly to the major banks and large insurance companies.

In reality however, FSU still deals with disputes with these same employers around:

1. Return to work at the same level following a period of maternity leave.
2. Unilateral changes to the hours or locations of part-time workers in retail banking, without their consultation or agreement.
3. Indirect discrimination around promotions due to perceived inflexibilities or the effect of family responsibilities.
4. Work pressures and short staffing– particularly in retail banking – which block women’s access to time away for vocational training and thereby block their opportunities for progression.

These issues exist across each of the major employers in our industry despite any policies they may have in place. *Refer Appendix 1 (attached).*

One of the steps FSU has taken to address these issues is our current campaign around understaffing. Results of a recent staffing audit show us that cuts to hours and staff, off shoring of back-office jobs and lack of relief staff have contributed to greater pressure on our members. Staff in retail banking are particularly feeling the pressure. Most have excessive sales targets and are expected to achieve more each year, with less staffing resources.

FSU is hearing from members that entry level tellers in the banks are no longer guaranteed comprehensive training. Often the branch manager is training them ‘on the job’ when and if they get time. Further, pressure from sales targets and lack of relief staff have led to exorbitant amounts of overtime being worked – much of it unpaid.

The demographic of the majority of these retail workers are women with children, working part-time or older women who have been with the bank for a substantial period. This group are most likely to support their colleagues in branches and work the extra hours, forgo training and days off – and in some cases, access to their own leave entitlements.

All of this causes pressure on these women day to day and severely restricts their access to training, improved job opportunities or indeed their tendency to pursue career aspirations.

Where younger women have managed to progress to the higher paying sales roles – (such as mobile lending or financial planning) prior to having children, they often find

their options are severely limited upon return from maternity leave. Rather than make use of these women's skills and experience, in some instances the employer asks them to return to a job at a lower level and status, or offers them a transfer of location which is unreasonable. The FSU continues to deal with disputes around return from maternity leave to jobs which attract large bonuses and commissions. This is a serious pay equity issue and one which could be overcome by giving thought to work organisation, including job design and hours of work.

Recommendation 6: *Require EOWA to conduct workplace pay equity reviews, based on the approach used in the NZ public sector. This to include pay audits and a broad review of employment conditions, including the degree of access to flexible work practices, training and career paths.*

EOWA to prioritise industries based on the gender pay gap and target large employers. These reviews to be undertaken as partnerships between employers and the relevant union(s).

One of the Industrial Relations Commission's functions under the Award modernisation process is to have regards to:

“the need to assist employees to balance their work and family responsibilities effectively and to improve retention and participation of employees in the workforce”. (emphasis added); [Part 10A, Division 2, s. 576B, (2)(f)]

The need to assist employees to balance their work and family responsibilities has been an object of the *Workplace Relations Act* and a power of the Commission for some years. This reference to retention and participation is new.

As the finance sector experiences skills shortages now and into the future, skill retention will become vital.¹¹ Good employers recognise that attracting and retaining skilled workers makes good business sense – gender pay equity is thereby a business imperative.

Recommendation 7: *That the Committee recommend that the Industrial Relations Commission check skills based classification structures, training clauses and flexible working provisions in modernised awards to ensure that this mandatory Award Modernisation function has been met, whilst balancing the need to protect the low paid and give certainty around earnings.*

Recommendation 8: *That the Committee recommend that the Commission adopt this principle in relation to certified agreements and review proposed agreements to ensure that impediments to full workforce participation and career planning are removed. That the parties to industrial relations be encouraged to improve return to work from parental leave provisions, via enterprise bargaining and to review proposed conditions to ensure that they maximise the retention, participation and career progression of female workers.*

¹¹ Refer *The future labour market and qualifications in Australia*, Centre for Economics of Education and Training (CEET), Shah, C & Burke, G, 2006. See also *Futures in Finance: Skills Forum Report*, Finance Sector Union, September 2008.

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

Recommendation 9: *The Committee recommend that stronger compliance regulation be developed around pay equity- via the industrial relations jurisdiction. This could include requiring Workplace Inspectors to conduct pay equity reviews*

Recommendation 10: *That the Committee recommend that unions and employers work together on pay equity initiatives in order to best achieve by-in from all levels of the workforce and to share their expertise.*