

Australian Education Union

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Submission

to the

**House of Representatives
Employment and Workplace Relations Committee**

**Inquiry into Pay Equity and Associated Issues Related To Increasing
Female Participation in the Workplace**

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1. Introduction

- 1.1 Gender pay inequity is in some ways a complex issue to tackle but at the same time a simple concept with the undervaluation of women's work at its root. Gender pay inequity is distinct from equal pay and is not only about the gender wage gap. These issues must not confuse the focus of this inquiry.
- 1.2 As we know, 'equal pay' was awarded by the Australian Industrial Relations Commission in 1972, which established the right for women to be paid the same wage as a man performing the same work. This made a significant impact on women's pay but ongoing labour market and societal trends sees the average pay gap between men and women as being around 15%.
- 1.3 The wage gap is a measure of gender pay inequity and while some factors influencing gender pay inequity are societal, the solutions are firmly industrial ones. This submission will outline the current situation for women's pay currently, take account of the opportunity to enact strong industrial principles and provisions when finalising the new national industrial relations system and discuss the needs to address ongoing societal views and values which continue to limit and affect women's workforce experiences.
- 1.4 Finding the best mechanisms to immediately and broadly improve gender pay inequity is the key to this inquiry. It is disappointing therefore that (as its already said, pay equity being an industrial concern) there is a mismatch evident in the timing of the development and implementation of a national industrial relations system with initiatives such as this pay equity inquiry (and also the Productivity Commission's paid maternity, paternity and parental leave inquiry).
- 1.5 The accompanying recommendations centre around clear industrial avenues for improvements, structural mechanisms to monitor and enforce equity through government and research, and finally policy options to assist awareness and societal change.
- 1.6 This submission is not attempting to reinvent the wheel as there are established and proven pay equity reforms which followed inquiries in NSW, QLD and Victoria and these clearly outlined factors and avenues to redress pay equity which could be taken up nationally. There is also much guidance from Canada, New Zealand and the UK, which is well known to those involved in Australian pay equity inquiries.
- 1.7 For AEU members, being located in a 'feminised' and undervalued sector, the professional recognition and possible pay advances through an industrially based pay equity re-assessment of work value remains a relevant and sought after strategy. As the QIRC recognised (2006) many occupations are typically characterised by career progression across an incremental pay scale.

- 1.8 In these occupations, women who withdraw from the labour force to raise children or perform other caring roles may forego or delay promotion-based increases that men of the same age may receive through continuous employment in an occupation. A systemic re-evaluation (free from gender discrimination) to improve educators' pay to its true professional worth, and to compensate women in education who do suffer pay inequity through non-continuous employment, would be welcomed.
- 1.9 Finally, this inquiry also asks, (other than gender pay equity), for a discussion of the "causes of any potential disadvantages in relation to women's participation in the workforce". The AEU understands the importance of universal public provision of education, as a human right, especially considering the transformative power of quality education and training for those, (particularly girls and women) from disadvantaged backgrounds.
- 1.10 It is for these reasons that opportunities to participate in further education and training need to improve for women.

2. Gender Pay Inequity as it Stands Today

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

- 2.1 The Australian Education Union believes that gender pay inequity has for too long not been fully understood nor seriously addressed at a national level and that this Inquiry must be clear about the need to act.
- 2.2 The gender pay gap, has been relatively stagnant (at around 15% for full time employees) in Australia for over two decades. However, pay inequity is not isolated to the Australian labor market, it is an international phenomenon.
- 2.3 Research suggests that a number of factors contribute to pay inequity with up to half of the gender earnings gap explained by human capital attributes (education and experience); demographic factors (gender, location, and presence of children); job characteristics (occupation, industry, casual/contract); workplace characteristics (size of workplace, feminisation of workplace, public/private enterprise); and the bargaining position of female workers (degree of centralisation, union membership). The remainder of the gender earnings gap is either unexplained, or is assumed to represent discrimination by employers.
- 2.4 Put differently, the concept of pay equity is broader than that of equal pay for equal work. The concept of pay equity attempts to consider the wide range of issues underlying and contributing to the gender earnings gap including "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 within the industrial system". (Fisher, 2007, p18)

- 2.5 While many factors which historically have contributed to gender pay inequity have improved in Australia, the earnings gap remains. Firstly, women increased their labour market participation generally and secondly were told that where contemporary shortages existed this demand would be an opportunity to increase wages. Women were also told they needed greater educational attainment.
- 2.6 However, and particularly recently, wages in jobs and industries where women work haven't increased despite labour shortages and while women have increased education levels this still hasn't provided equality in earnings and career progression.
- 2.7 Women in fact are participating in higher education in greater numbers than men and are higher performers in many areas, (to the extent some claim boys are now unduly disadvantaged) and yet pay inequity still persists at the professional/executive level as well as in low paid jobs.
- 2.8 Time out of the workforce, without financial compensation in the form of paid maternity leave and other flexible arrangements have also been a huge contributing factor to pay inequity. The Productivity Commission reports that Australia ranks 20th of 30 OECD countries for the workforce participation of women of childbearing age. Though arguably not for enough women and men, nor on a universal basis, commitment to policies aimed at allowing greater work and family balance has significantly improved over the last 30 years, but has not yet dented the wage gap.
- 2.9 The impact this has on women's superannuation and retirement savings is more than alarming. The Human Rights and Equal Opportunity Commission report *It's About Time*, (2007) regarding gender equity reported figures that show that half of all women aged 45-60 have \$8000 or less superannuation, while 70% have \$25,000 or less.
- 2.10 Australia exhibits one of the strongest gender segregated labor markets. Seen especially amongst what some call 'the five c's' are the female dominated low paid occupations/industries – caring, clerical, 'cashiering' (retail), cleaning, and catering. Within these low paid areas there is also a lower level of permanent employment and union membership. Without the ability to bargain collectively and with strength, these employees are heavily reliant on centralised wage fixing and are award dependant.
- 2.11 Women earn less than men in all industry sectors, public and private. The industries with the worst gender pay gaps are finance and insurance (61%) and mining (76%). Those with better pay equity records are Government, Administration and Defence (91%), Retail (90%), and Education (89%) (Burrow, 2008).

- 2.12 It would be fair to say enterprise bargaining has not delivered pay to adequately value women's experience and skills. Many tasks and so called soft skills such as communication, decision-making and pastoral care go unrecognised as a work skill. A way forward to redress this problem of the gender gap is to have the work that women do properly valued and remunerated. The problem of undervaluation of women's work can be redressed through tackling gendered notions of skill and reward that exist in pay and classifications structures in awards and agreements.
- 2.13 The Victorian Inquiry into Pay Equity (Whelan, 2005, p4) had a similar analysis, that "taking all of these factors into account in the Australian context - methods of wage fixing; occupational and sectoral segregation; part-time and casual employment; education and workforce experience - there still remains part of the earnings gap which is unexplained. This unexplained gap is generally attributed to discrimination and in particular systemic discrimination."
- 2.14 Before going to the industrial strategies, the actual figures on the pay gap need to be reviewed and understood.
- 2.15 At February 2007, a study into data collections showing women's pay (Preston et al, 2007, p10) showed that Australian women earned 84.1% of men's average ordinary time earnings, or 80.8% of men's total time earnings which includes overtime payments. It also notes the gap is wider in private sector employment with women's ordinary time earnings 87% of men's in the public sector but 80.7% in the private sector.
- 2.16 The Curtin University of Technology (Preston et al, 2006) research however reports the need to reinstate previous or extend current data collections to account for the specific indicators of women's disadvantage and expose them, as current data is inadequate to tell the full story of women's pay.
- 2.17 The ABS Average Weekly Earnings (Catalogue 6302.0) needs to provide details about earnings within different wage setting jurisdictions, employment contract and occupational categories to allow for any predictions of trends in types of employment contracts/work.
- 2.18 The ABS *Employee Earnings and Hours* (6306.0) could be more useful if run more regularly and be constructed on a time series basis which would make comparing the occupational and industry levels easier and could assist gender pay equity queries as it does include sex within industry and occupation. When attempting to understand the difference in pay for types of employment contract this collection is also useful however it is only collected every two years and cannot provide any assessment of previous workplace reforms and the impact of individual contracts, such as AWAs which did make a huge difference to the gender wage gap.

- 2.19 Further impacting the pay gap is part-time and casual employment, however Preston (2007, p13) notes “there are, unfortunately, no time-series data available through which to study yearly trends in the pay of part-time employees. One way around this is to use data from the ABS Labour Price Index (LPI) (6345.0) survey. These data do not ... permit an analysis on the basis of sex although it is possible to follow trends in particular occupations and industries. As the labour market exhibits significant gender segregation, these data allow comparisons between industries and occupations that are highly feminised with those that are highly masculine.”
- 2.20 The LPI data shows that the lowest pay industries are ‘Accommodation, Cafes and Restaurants’ and the ‘Retail Trade’, two feminised industries. And it also shows that between the lowest paid occupations, the male dominated category of ‘Labourers and Related Workers’ received higher nominal wage increases of 3.88% compared with 3.45% for workers in the female dominated category of ‘Elementary Clerical, Sales and Service’. (Preston et al, 2007, p13)
- 2.21 The Victorian gender pay gap is said to be 18.4% for full time weekly earnings, or 11.2% for full-time non managerial employees, with no substantial improvements in this gap since 1986. (Whelan, 2005, p3)
- 2.22 In Queensland Average Weekly Earnings data shows the pay gap narrowing by only 3.2% or 3.4% depending on the analysis (QLD Government, 2006, p6) over the last 23 years which is quite slow yet is still better than some other states/territories’ efforts.
- 2.23 Western Australia has the biggest gender pay gap in Australia. At 28% the difference between men and women’s pay has been steadily worsening over the last twenty years. (WA Pay Equity Unit, 2007) Prior to the previous Federal Government’s *Work Choices*, industrial reforms further reduced women’s pa. The WA Pay Equity Inquiry, at February 2004 had the gender wage gap in the full-time WA labour market at 22.61%. In dollar terms this meant that women’s average earnings were \$232.30 less than those of men. The gap increased to 25.81% when based on full time adult total earnings.(Todd et al, 2006, p19)
- 2.24 Women's earnings are affected by their capacity to access maternity leave, paid sick leave for carer purposes and annual leave to manage their family responsibilities. In August 2006, 27% of employees had no leave entitlements and of these 53% were women and 63% were part-time. There is a 32% gender pay gap between part-time/casual employees on individual agreements and permanent full-time employees. Demonstrating the effect of undervalued and already low paid industries, this gap is shown to be much reduced to .05% in accommodation/retail industries (where ALL employees earn less) while in the mining sector the gap is 22% showing gender imbalances and a different work value placed on male industries. (Preston et al., 2007, p15-16)

- 2.25 Lunn (2008) reported the study compiled by Siobhan Austen from Curtin University of Technology and Gerry Redmond from the Social Policy Research Centre at the University of NSW which argued 2008 ABS statistics showed that "because so many of the newly created jobs were part-time, women's share of overall income remained steady between 1995 and 2005 at 38per cent". And it said that while the proportion of women employed in part-time jobs rose from 25per cent to 29per cent over the decade, full-time employment remained steady at around 37per cent.
- 2.26 Women's income had made advances "but the momentum was not sustained during the Howard government...Women also made little inroads into the top 20per cent of earners in the decade to 2005, while they continued to be over-represented among the lowest 20per cent." (Lunn, 2008)
- 2.27 The study also details the way government payments to families have increasingly skewed toward middle and upper-middle income brackets. For example, the government contribution to women in the top 40 per cent of earners increased in the decade to 2006. In contrast, the level of government payments to the poorest 20 per cent of women remained largely steady over the same period. Saulwick, J. (2008)
- 2.28 Finally, Preston notes during the Howard Government's workplace reforms, very little data was kept to track or compare women's pay, with the Office for the Employment Advocate report, *'Agreement Making in Australia Under the Workplace Relations Act,'* not being disaggregated by gender in any meaningful way at all.
- 2.29 Throughout the Queensland Government's Pay Equity Inquiry in 2006 some useful information did emerge. An analysis of the ABS Earnings and Hours data for May 2006 demonstrated that while the average weekly earnings of Queensland women on Australian Workplace Agreements (AWAs) appeared nominally to be nine per cent higher than women on registered collective agreements, the inclusion of factors such as additional hours of work, meant that, in reality, average hourly earnings for women on AWAs were 16 per cent lower than women on registered collective agreements. (QLD Government, 2006, p9)
- 2.30 The Queensland Government, through their Pay Equity Inquiry (2006, p9) agreed that current data collections relevant to tracking women's pay are fragmented and argued for "the development of an adequate data base from which to monitor wage trends will require extensions and modifications to existing data collections, methods and analyses. In the context of the new regulatory framework, it is possible to identify concerns with the adequacy of commonly used data on wages and employment conditions. Few existing surveys provide comparative data on earnings and conditions of employment according to the type of employment contract used."

- 2.31 It is clear that without adequate data, the gender pay gap can be masked and that efforts to pinpoint areas for redress can be based on assumptions which may be unhelpful and inaccurate.

Recommendation

1. The AEU supports the observations and recommendations within the Curtin University report 'Women's pay and conditions in an era of changing workplace regulations: *Towards a "Women's Employment Status Key Indicators" (WESKI) database*' and recommends the Federal Government implement these recommendations in full, (noting that the 2007 Ministerial Council for Ministers for Women's Affairs Working Party on Pay Equity has already committed to these).

3. Immediate Avenues for Change to Effect Gender Pay Equity

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

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

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

- 3.1 The AEU believes national workplace reform is a key opportunity to provide the best possible model for Australian women's pay and conditions to be better valued and equitably assessed.
- 3.2 Industrial legislation is the most powerful avenue to remedy gender pay inequity as for most of Australia's history our system has been set up with a key tenet being the ability to take a case to an industrial tribunal, have it argued by parties representing the collective interests of employees and employers and have decisions flow on whether to workplaces, industries/occupations or the whole workforce.
- 3.3 In taking the opportunity to improve gender pay equity, in the context of reforms by the new Federal Government for a national workplace relations system, previous and current industrial relations systems need to be understood.
- 3.4 The Commonwealth Act has never provided real opportunities to correct the undervaluing of feminised work or skills. In the first place, AIRC equal remuneration orders were limited to work of equal value and the Commonwealth legislation has never contemplated equal remuneration for work of comparable value. This limitation on the efficacy of such orders in closing the gender earnings gap had been entrenched with the Howard Government's *Work Choices* reforms, elements of which are still in operation.

- 3.5 Further, the requirement to prove that rates of remuneration have been established on the basis of gender discrimination before a corrective order can be made has impeded progress towards pay equity through equal remuneration orders under the Commonwealth Act.
- 3.6 However, the Australian model of minimum wage setting and the Award system *did* prove to enable gender pay equity improvements through Award processes and resulted in a better gender pay gap than in many other countries.
- 3.7 ABS data analysis shows that the gender wage gap narrowed markedly between 1974 (0.78) and 1978 (0.90) following a series of decisions on specific awards which flowed from a 1972 decision granting equal pay for equal work. A further but less pronounced narrowing of the pay gap occurred between 1983 (0.88) and 1994 (0.94) but with a slight widening of the gap over the last decade (during the Howard Government).
- 3.8 Regardless of some of the initial inadequacies the WRA, *Work Choices* fundamentally changed the ability to argue for pay increases on the basis of equity principles. The removal of award coverage as the primary mechanism of wage-fixing in favour of largely privatised and confidential individual agreements means that there are few mechanisms for delivering pay equity outcomes to the majority of women workers. (Queensland Government, 2006, p5)
- 3.9 The campaign against the *Work Choices* reforms intentionally drew attention to the pay situation for women in low paid (and highly vulnerable to individual agreement) employment because studies had clearly shown that women covered by collective agreements have an hourly wage rate more than 10% above women on individual contracts (AWAs).
- 3.10 Given its similar industrial relations system the New Zealand experience of individual employment contracts throughout the 1990s has also shown how these sorts of contracts result in women's wages increasing at a lower rate than men's and show a widening of the wage gap (Fisher, 2007, p88). Conversely, collective agreements are better instruments to reduce the pay gap than individual contracts.
- 3.11 The New Zealand changes also established that women's pay had "not recovered from the initial marked drop in 1994 but had remained relatively static since then, that women continued to be less likely to access penalty rates than men, and the general observation that once employment benefits are lost or removed from a settlement they are not easily reinstated" (Fisher, 2007, p88). This makes rebuilding a new workplace system even more crucial for women.

3.12 The Rudd Labor Government is devising a national industrial relations system, (via reforming the Workplace Relations Act and other key pieces of legislation) to ensure a safety net of 10 National Employment Standards (NES), a process to modernise awards (in scope and content), the potential harmonisation of state workplace laws and the establishment of Fair Work Australia to oversee collective agreement making, minimum wage setting and reviewing, resolving unfair dismissals and monitoring compliance with the laws.

3.13 The NES includes:

- i. A standard 38 hour working week for full time employees and a right to refuse unreasonable overtime.
- ii. Up to 24 months unpaid parental leave.
- iii. A right for parents to request flexible work arrangements.
- iv. 4 weeks paid annual leave each year, plus an additional week for shift workers.
- v. Ten days paid personal leave each year, two days paid compassionate leave and two days unpaid emergency leave.
- vi. Leave for community service.
- vii. All national and state public holidays with penalty rates.
- viii. A requirement that employers provide all new employees with information about their rights.
- ix. Notice of termination and, if employed in a workplace with at least 15 employees, redundancy pay.
- x. Long service leave.

3.14 FairWork Australia will:

- set minimum wages and publish pay rates.
- review and adjust awards.
- facilitate collective bargaining and make orders enforcing good faith bargaining.
- supervise secret ballots for industrial action and deal with industrial action.
- review and approve collective agreements.
- assist parties to resolve grievances.
- resolve unfair and unlawful dismissal claims.
- monitor compliance with and resolve disputes relating to workplace laws, awards and agreements.
- regulate registered industrial organisations.
- promote family friendly-working arrangements.

Judicial functions, currently resting with the Federal Court, will remain separated from the non-judicial functions of FairWork Australia.

- 3.15 In all these areas there are opportunities to improve women's pay, conditions and security of employment, participation in the workforce, abilities to better balance care responsibilities and hence address many of the factors contributing to gender pay inequity.
- 3.16 In particular the new Substantive Act provides an avenue to be clear about giving assurances that the system should be facilitative in preventing and eliminating discrimination in the workplace and to ensure equal remuneration for men and women doing work of equal or comparable value, to take opportunities through modern award making that women in particular industries and occupations are provided mechanisms to ensure their pay and conditions are viewed/reviewed through gender free assessment tools, and that minimum rates and pay structures to be set across the board take account of pay equity principles.
- 3.17 With an understanding of key aspects of the Rudd Labor Government's proposed national workplace relations system and other commitments made to begin dealing with gender pay equity through the Office for Women (OFW) and the Equal Opportunity for Women in the Workplace Agency (EOWA) there are a number of further actions that can and must be taken before the national system is finalised.

Recommendations

The AEU therefore makes the following recommendations with regard to all areas of the new industrial relations system, that:

2. The Government urgently reviews the Equal Remuneration Principles in the current Federal Workplace Relations Act to better reflect Principles in states such as Queensland where the establishment of discrimination or comparable work value is not required.
3. Fair Work Australia (FWA) should be invested with broad statutory powers to ensure compliance with Australia's international obligations in respect to ILO Convention 100 relating to Equal Remuneration for Work of Equal value.
4. The Government should ensure that one of the Objects of the Substantive Act is to prevent and eliminate discrimination in the workplace and in particular, to ensure equal remuneration for men and women doing work of equal or comparable value.
5. This Object should be a 'stand alone' Object, in addition to any requirement to eliminate discrimination on the grounds of gender, ethnicity, race, religion and the like, contained within the Objects.

6. Ideally the legislation would reflect the Queensland pay equity principles, whether in the body of the legislation, as a Schedule to the legislation or within the regulations.
7. An adequate minimum wage is an important factor in improving women's wage outcomes and dealing with the gender wage gap as many women workers are reliant on minimum wages.
8. Annual wage rate reviews and four yearly reviews of awards should include consideration of the gender equity objects of the Act ensuring equal remuneration and other conditions of employment for men and women doing work of equal or comparable value. The Fair Pay Commission has already commissioned research into pay equity, which is welcomed.
9. As part of the award modernisation process the Australian Industrial Relations Commission, who certainly have the expertise to do so, could investigate skill, value, pay and classification structures that may reflect past concepts of the value of women's work. Award modernisation provides a unique opportunity for tackling past held gendered notions of skill and value of work. The Minister should issue a supplementary request to this effect.
10. FWA should be required, when reviewing rates of pay, to have regard to the need to ensure equal pay for work of equal value and narrowing the gender pay gap.
11. The Act should provide that Awards made by the Commission must provide equal remuneration and other conditions of employment for men and women doing work of equal or comparable value.
12. There should be a capacity for unions to bring a case on behalf of particular groups of employees to FWA adjust rates of pay based on undervaluation of work.
13. Agreements should not be able to include discriminatory arrangements including unequal remuneration for work of equal value. In applying the 'better off overall test' FWA should have regard to whether the agreement provides for equal pay for work of equal or comparable value

14. FWA should be empowered to make orders to address unequal remuneration for work of equal or comparable value. FWA should be able to hear and determine applications without regard to legal technicalities. The legislation should not prescribe or proscribe how FWA ascertains whether there is unequal remuneration, nor should it constrain FWA in determining the appropriate remuneration for the work. In particular, FWA need not make a finding of discrimination (direct or indirect) in order to enliven the equal remuneration jurisdiction.
 15. Bargaining Parties should develop Equal Remuneration Best practice and FWA should include a Division whose purpose and role is to gather data, publicise best practice, and issue regular updates on the achievement of equal remuneration for employees covered by the federal system of awards and agreements. The Division would be able to be called upon by the Commission in order to assist in any review undertaken so as to give effect to the Object of the Act dealing with equal remuneration.
 16. That the focus on pay equity displayed by the Office for Women conducting Pay Equity Roundtables should continue, as should EOWA's brief to focus on pay equity.
- 3.18 Following on from structural/industrial methods to redress gender pay inequity, it is useful to look to the international sphere which exhibits evidence of successful alternative models involving legislative, educative and human rights/complaints based strategies.
 - 3.19 International models most celebrated as the most effective in addressing pay equity are those legislative/compliance models which include specialised bodies to monitor and ensure compliance by requiring employers to develop and implement a pay equity plan.
 - 3.20 In particular Quebec (Canada) and Sweden are cited as successful models. The New Zealand model is positive in that a pay and employment unit has been established to assist with pay equity reviews and a 5 year policy plan has been developed firstly for the public sector, however this strategy has been said to be less effective so far. (QIRC, 2006)
 - 3.21 The experience in Canada and that particularly of Quebec, following their 2004 Pay Equity Taskforce analysis finds that proactive legislation is most suited to supporting and ensuring systemic change in existing discriminatory practices.
 - 3.22 Quebec's *Pay Equity Act 1995* widely regarded as most progressive approach to pay equity to date as it compels companies "to adopt an action plan that ranges from the analysis of pay determination systems to implementing the required pay adjustments to ensure that jobs of equal value receive an equal pay". (Fisher 2007, p93)

- 3.23 There are a range of actions employers (according to their workplace size) are required to undertake from developing pay equity plans to address things like:
- the identification of predominantly male jobs and those which are predominantly performed by women;
 - the development of job evaluation methodology;
 - job evaluation, calculation of pay disparities and implementation of pay adjustments; and
 - determination of the timeframe for making pay adjustments
- 3.24 Also required is the establishment of formal plans with union involvement or a pay equity committee of employees.
- 3.25 The Pay Equity Commission administers the Act and though doesn't require employers to file reports to the Commission the Commission has the power to conduct investigations on its own initiative.
- 3.26 The NZ Government decided to implement a slightly different pay equity strategy by first establishing the Pay and Employment Equity Unit in 2004 which is responsible for implementing the Pay and Employment Equity Plan of Action including a review process and equitable job evaluation tool and a contestable fund to help parties undertake specific projects to support or review pay equity and provide ongoing training and support.
- 3.27 The Pay and Employment Equity Unit's main functions (Fisher, 2007, p89) were to:
- take a systematic approach to eliminating the causes of inequity;
 - develop tools for a pay and employment equity review process and for gender-neutral job evaluation;
 - provide and deliver training materials for organisations conducting reviews;
 - administer a contestable fund for employers and unions;
 - support organisations to carry out their reviews;
 - provide information, including fact sheets, associated research, case studies and guidelines;
 - facilitate networking to encourage organisations involved in the reviews to share experiences; and
 - monitor and report on progress on pay and employment equity.
- 3.28 Via the Government's resulting Five Year Plan of action three phases were undertaken, firstly in the public service (and in occupations with 70% women) to undertake reviews and develop the gender-neutral job evaluation tool, secondly implement the review outcomes and thirdly spread the process through the private sector.

- 3.29 A clear positive of the NZ approach was the range of high quality resources developed by the Unit for use in this process. To date, 12 out of 37 public service agencies have completed reviews and provided response plans and eight are currently conducting their reviews, and this wealth of knowledge is surely useful to the Australian context.
- 3.30 In her own words, (Fisher, 2007, p91) the head of the Pay and Employment Equity Unit, Ms Phillipa Hall said the clear gains included:
- promotion of greater openness and transparency of wage and promotion systems;
 - greater clarity of job specifications;
 - employee participation in equity issues;
 - constructive interaction with unions; and
 - improved organisational communication.
- 3.31 As another brief example, the Equality Act 2006 in the United Kingdom provides their system of mandatory pay equity reviews in the public sector, which are however conducted yet voluntary in the private sector. (Whelan, 2005) The Act itself “places a statutory duty on all public authorities to have due regard to the need to eliminate unlawful discrimination and harassment and promote equality of opportunity between men and women. (Fisher, 2007, p3)
- 3.32 Far more could be said regarding international best practice however, important models have also been trialed in Australia to varying degrees of success.
- 3.33 Whelan’s report on the Victorian Pay Equity Inquiry (2005) is a good example of the educative strategy which is one of the 3 key approaches to pay equity. Devoid of similar state industrial tribunal avenues like NSW and QLD, Victoria undertook a more enterprise level strategy by recommending and then trialing pay equity audits. It does however show why the federal industrial relations system is relied upon and why improvements to pay equity principles should be made to ensure national consistency.
- 3.34 Whereas NSW found flaws in the anti-discrimination legislation model this too is what limits Victoria’s approaches because the enterprise level cannot effectively remedy an industry as a whole or address systemic discrimination.
- 3.35 Whelan says that in the New South Wales Pay Equity Inquiry “Justice Glynn found that the remedies available under anti-discrimination legislation cannot, for example, effectively rectify the undervaluation of work related to whole occupations and industries.” (Whelan, 2005, p6)

- 3.36 The focus on pay equity in Victoria prompted the FSU/NAB agreement on conducting a pay equity audit. They discovered education to be an imperative part of their strategy considering the finding that “job design (especially related to the quantum and spread of hours), recruitment and promotion criteria, processes for negotiating pay including start rates and pay increases and detrimental impact on work and career associated with accessing provisions to support work-life balance” were those used to explain pay gaps yet in the NAB case (Windsor, 2007, p24) staff and managers did not view these as specifically discriminatory towards women.
- 3.37 Hence NAB found leadership on educating and being proactive about equity issues as being crucial in the knowledge that inequity existed by employees would be unlikely to raise issues on a case by case basis for lack of awareness.
- 3.38 The experience of the NAB and FSU coming together to undertake a pay equity audit as part of their collective agreement shows the importance to women of having union representation and the initiative to deal with complex issues in a non-combative context. However, this also demonstrates the vulnerability and hence constrained situation women in low paid and poorly unionised employment find themselves in when their only avenue to reduce this pay injustice is by industrial structures and processes. (Windsor, 2007, p5)
- 3.39 The AEU believes audits are useful as a diagnostic tool and to assist organisations understand dimensions and application of gender pay equity, however the compulsion to act, via principles or separate legislation allows for advances in a more systemic fashion.
- 3.40 More useful to us is the Queensland inquiry into gender pay equity which resulted in its main recommendations being the establishment of a Pay Equity Act, a Pay Equity Commission and a Pay Equity Commissioner. The pay equity principle within the Act to govern the QIRC's approach was to ensure “equal remuneration for work of equal or comparable value” and the Act also identifies the features that contribute to the undervaluing of work in female dominated industries and occupations which is of assistance to parties involved with taking a claim to the commission (so too did the provision of the QLD Government Pay Equity Grants program which helped fund cases taken to the QIRC).
- 3.41 The QLD principle “contained the traditional work value elements but included other types of issues to be taken into account such as award histories, occupational segregation, and the occupation's demographics. The Principle also specified that male comparators and discrimination were unnecessary to find undervaluation but that the evaluation was to be undertaken transparently, objectively and in a gender neutral way. Once undervaluation was found the Principle provided guidance on how it could be rectified.” (Queensland Government, 2006, p35)

- 3.42 The Pay Equity Act would apply to all employers, whether engaged in the public or private sectors and whether they are constitutional corporations or not, which effectively employ 15 or more employees. The Act would contain provisions for the following:
- the development of pay equity plans;
 - the establishment of pay equity committees with a predominance of women members;
 - legally binding documentation of pay equity adjustments;
 - the implementation of adjustments where pay inequity is found;
 - mandatory reporting;
 - dispute resolution; and
 - sanctions for non-compliance.
- 3.43 Further, this model Equal Remuneration Principle was concluded by the Government to “provides a useful analytical framework for the consideration of pay equity. The cases conducted under the Principle have illustrated this usefulness by highlighting the traditional undervaluation of the work performed by the two predominantly female occupations considered. The Equal Remuneration Principle was found to be a particularly effective outcome of the previous Inquiry.” (Fisher, 2007, p3)

Recommendations

17. That in the review of any Equal Remuneration Principles in the current Federal Workplace Relations Act, that proposed legislation consider including provisions like those in Queensland and New South Wales.
18. That the Principles used within any process developed federally to allow pay equity cases to be taken, the ease of enforcement, volume of evidence and time be taken into account to ensure pay equity is accessible.
19. That Government ensure a suite of pay equity tools (like NZ’s gender-neutral job evaluation tool, Canada’s pay equity action plans and QLD’s Pay Equity Grants programs to support parties undertaking reviews/audits) be adopted.
20. That Federal Government Agencies like EOWA, HREOC and FWA be given adequate powers with a capacity to enforce but also investigate on their own initiative.
21. That compliance of pay equity within Awards and Agreements be assured via the Federal Workplace Ombudsman or FWA.

4. Broader Efforts to Solidify Equality

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

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;

- 4.1 The AEU strongly supports a community education campaign on the gendered nature of the Australian workforce and the importance of change. Further that it be emphasised to the community the detrimental impact traditional (and discriminatory) policies around primary care giving, working hours, childcare fees and access, return to work and career progression following maternity and access to further education, can have on women and men and the community.
- 4.2 British PM Gordon Brown said “for too long the equality issue has been marginalised and seen as part of social policy, not macro-economic policy.” (EOC, 2007, p14) There is a real need for education and information regarding pay equity. The economic imperative to do so is compelling but so should the notion of social justice be a high motivating factor for government to ensure gender pay equity. Nevertheless it is recognised that “pay equity is associated with higher productivity through better use of skills and higher workforce participation rates.” (QIRC, 2006, p5)
- 4.3 UK experience shows the economic imperative to unlock women’s potential in order to become truly globally competitive and productive, because their workplace cultures to date had uncovered untapped skill with 4.8 million “not fully using their skills and experience at work and say they would have made different job choices if flexible working had been available...Despite continuing graduate skill shortages, a minority of female graduates are now in high level jobs and the trend is getting worse – 45% women of qualified to level 4+ compared with 65% ten years ago”. (EOC, 2007, p4)
- 4.4 In addition, the proportion of women graduates in low-level jobs – the bottom 25% of all jobs – has almost trebled, from 5% in 1995 to 13% in 2005. One in ten women with degrees work in low-level jobs throughout their working lives. (EOC, 2007, p10)
- 4.5 From a business case perspective, pay equity is seen as providing organisations with a competitive advantage in attracting and retaining a skilled and more productive workforce. It’s said (QLD Government, 2006, p21) the ILO “accepts the business case and argues that equity enhances the capacity of business to attract a broader range of quality employees in a competitive job market, reduces staff turnover, results in less absenteeism and lateness, enhances staff performance and motivation and improves productivity, providing a competitive edge and innovation contributing to improved effectiveness.”

- 4.6 Given these imperatives it is unjust and unwise for society to continue to accept the limitation placed on potential participants in the skilled workforce because of gendered expectations within industries/occupations and by employers and employees alike.
- 4.7 There is acknowledgement that (QLD Government, 2006, p19) the "industries with high female employment in Australia exhibit similar characteristics including: a high level of award only coverage; high levels of part-time work; low levels of unionisation and low levels of hourly earnings. These industries are accommodation, cafes and restaurants (58.3% women); cultural and recreational services (50.5% women); health and community services (78.6% women); personal and other services (47% women) and retail trade (51.4% women)."
- 4.8 Further, female occupations have in the past "been those with relatively poor wages and conditions and, more importantly, they have had very short promotion ladders and provided only limited access to human capital enhancing training and education. The early employment experiences of many women may thus be a major factor inhibiting their labour market activities over their lifetimes. To the extent that these are reflected in gender earnings differentials, the occupational segregation of young women may be an important contributor to the maintenance of the gender earnings gap" (Lambert, Pertridis and Galea, 1996 cited in Whelan, 2005, p4).
- 4.9 The AEU strongly believes there is a role here for educators and that clear careers advice and guidance is vital at an early stage in young people's lives. Post-compulsory education and training, (and employment outcomes) are of course contributing to the gender segregated labour market. Thomson (2005) assesses LSAY literature which has pointed to differences in curriculum participation according to background variables such as social background and gender. It is argued that if these choices lead to different but equal outcomes then there is no problem: there are just different choices. If, however, such differences lead to better or poorer outcomes for particular groups, then it is important that such issues be explored and exposed.
- 4.10 Students who choose subjects at Year 12 level without some thought as to the ramifications of such choices may find themselves unable to participate in further education and in a very vulnerable position in the labour force. Turner-Zeller et al research (2007) interviewed girls individually and nearly all told the researchers that they "were familiar with the type of work involved in their career choice, but then demonstrated they did not know about job availability or pay rates and how this impacts on their choices."

- 4.11 The courses that provided the poorest pathway to further education and training of any type, were the *service-clerical vocational*, *mixed-eclectic* and *visual and performing arts* courses. All of these are dominated by female enrolments, and generally by those in lower achievement levels.
- 4.12 Further gender differences are apparent: males being more likely to be employed on a full-time basis, females on a part-time basis. Unemployment rates were similar for both cohorts, but females were more likely not to be in the labour force. (Thomson, 2005, p48)
- 4.13 Given that 70% of people living in poverty are women, and two thirds of illiterate adults are women the risks of lack of engagement in tertiary education are dire. Turner-Zeller (2007) established the following stark considerations:
- Over 91% of jobless households are headed by women, and it is harder for them to move into paid work because the income they are likely to earn seldom covers childcare costs.
 - Education is an extremely important tool in alleviating poverty. It creates economic growth, generates higher living standards and makes society cohesive. And we know the cycle of poverty is worsened by people's lack of participation in education. (CARC 2004 p227). However, the outcomes from VET often do not lead to sustained economic security for women.
 - Because of the effect of workplace inequality, employment does not protect women from poverty and they tend to dominate amongst the working poor.
 - Where women of low socio economic status do overcome the huge barriers of cost of childcare, cost of and access to training, to successfully participate in training, this effort is not rewarded through secure, higher skilled, higher paid employment.
 - Employers tend not to invest in training for casual and non-permanent staff, the majority of whom are women of low SES, and where on-job training is available, the inflexibility in delivery often prohibits women from participating.
- 4.14 Victoria understood this matter noting that within measures they recommended, included had to be "support for women entering non-traditional areas of employment, identification of the impediments to training and career advancement for part-time employees, and the establishment of gender neutral methods of job assessment as well as identifying and remedying pay inequities through classification systems and pay mechanisms. (Whelan, 2005, p8)
- 4.15 The final piece of the pay equity puzzle to be recognised by this inquiry is the intersection of women's family and care arrangements (and consequently men's share of domestic unpaid labour) and the impact that this has on paid work options.

- 4.16 The Human Rights and Equal Opportunity Commission report *It's About Time: Women, Men, work and family*, describes pay inequity as a major factor in determining the choices men and women make about who undertakes care within couple families. "The report states that in order to allow real choices for men and women (in relation to paid and unpaid work), a greater effort is required to progress pay equity. In relation to this, paid maternity leave is seen as critical in creating greater decision making choice for both men and women." (Fisher, 2007, p19)
- 4.17 The HREOC submission to previous pay equity inquiries again highlighted the significant effect arrangements that families make for the care of children and other family members, has on pay equity. They note that "despite many younger couples moving to more equal sharing of work and family roles, simple economics mean that it still overwhelmingly the lower paid woman in a couple who reduces her paid work when the couple is struggling to balance work and family responsibilities. This affects the father's ability to be more involved in child care. Not only then is pay equity relevant to the quality of both women's and men's working lives, but pay equity and flexible work practices for parents are interconnected." (Fisher, 2007, p65)
- 4.18 Changing work is increasingly being seen as more economically sustainable and necessary. Australia's way of working, like Britain, is looking increasingly unsustainable as we look to the future. An Equal Opportunities Commission (2007, p4) report sees that "on the one hand, endemic long hours, particularly for men and increasing work intensification, particularly for women, are squeezing out time for caring and increasing illness and stress leading to wider social costs. On the other hand, employers in key sectors face a challenge for the future to recruit and retain highly-skilled people because their ways of working are increasingly unattractive to their workforce."
- 4.19 Again, the impact of attitudes to work practices on pay equity and opportunities for women's workforce participation is a key, and they must be changed. This culture change is being advocated more strongly overseas and the mismatch of needs must be exposed. Its true that, "one of the most frequently cited barriers for women entering better paid, career oriented jobs across all industries is the structure of working hours... As long as taking advantage of progressive work-life balance policies means forfeiting career aspirations and feeling that you are letting your work team down, the policy-practice gap in this area is likely to be wide." (Windsor, 2007, p23)

Recommendations

- 22.** That the Federal Government, as a matter of urgency, implement a national campaign to educate employers, employees and unions on gender pay equity.
- 23.** That the Federal Government reassess gender stereotyping in curriculum and careers advice/course selection processes both in school education but also further education and training institutions.
- 24.** That there be continued support for bodies (such as Working Women's Centres) which provide women access to information about the working rights, conditions of employment, negotiation skills and avenues for complaints.
- 25.** That the Federal Government, with the support of the Office for Work and Family implement a national campaign to educate employers, employees, unions and the broader community about the sorts of workplace flexibilities available to support families and carers and importantly to encourage more men to take up these provisions.

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