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

**Inquiry into: Pay Equity and Associated Issues
Related to Increasing Female Participation in
the Workforce**

**Supplementary Submission on Pay Equity and
the Child Care Industry**

**Submission by the Department of Education,
Employment and Workplace Relations
February 2009**

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1 Introduction

1.1 In September 2008, the Department of Education, Employment and Workplace Relations (DEEWR) made a submission to the House of Representatives Standing Committee on Employment and Workplace Relations Inquiry into Pay Equity and Associated Issues Related to Increasing Female Participation in the Workforce (the Inquiry).

1.2 A supplementary submission was subsequently provided to the Committee on 8 January 2009 outlining relevant pay equity provisions included in the Fair Work Bill 2008 (the Bill).

1.3 On 23 October 2008, Ms Sharryn Jackson, Chair of the House of Representatives Standing Committee on Employment and Workplace Relations wrote to the Hon Maxine McKew MP, Parliamentary Secretary for Early Childhood Education and Child Care, inviting a supplementary submission from DEEWR on the terms of reference for the inquiry as they relate to the child care industry. Accordingly, this submission provides information that is relevant to the Committee's terms of reference, in particular:

- the adequacy of current data to reliably monitor employment changes that may impact on pay equity issues;
- 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; and
- the need for further legislative reform to address pay equity in Australia.

1.4 The existing DEEWR submissions to the inquiry will be referenced in this submission as the DEEWR Principal Submission and the DEEWR Supplementary Submission.

Outline of submission

1.5 The submission is presented in five sections.

1.6 This opening section introduces the submission and outlines the purpose of the submission.

1.7 Section 2 of the submission provides an overview of the child care industry.

1.8 Section 3 details the outcomes of a series of industrial cases in the child care industry in recent years, under both work value and equal remuneration principles.

1.9 Section 4 provides information on industrial instrument coverage, wage rates and the gender wage gap for the industry.

1.10 Section 5 discusses measures proposed in the Bill that may be relevant to the child care industry. In particular, a summary of the process for award modernisation for the child care industry is provided.

2 Child Care Industry Profile

Industry structure

2.1 Child care refers to arrangements made for the care of children under 12 years of age. Formal care is regulated child care away from the child's home. Informal care is non-regulated child care either in the child's home or elsewhere, for example, care provided by a grandparent.¹

2.2 The main types of formal childcare include long day care, family day care, occasional care and before and after school care.

2.3 There are over 4 500 child care providers throughout Australia. Most of these organisations are small employers with no more than about 20 employees each, covering childcare workers, children's services workers and a minority of teachers.² There is a broad mix of public and private sector organisations providing child care services.

2.4 In June 2005, approximately 1.5 million children aged 0-12 years received some type of child care in the reference week. This represented 46 per cent of all children in this age group. Formal care, either alone or in combination with informal care, was used by 711 500 children or 21 per cent of all children in the reference week. Informal care, either alone or in combination with formal care, was used by 1.1 million children or 33 per cent of all children aged 0-12 years.³

Commonwealth support for child care

2.5 The main types of Commonwealth support for child care are:

- direct financial assistance to families to help reduce the cost of care (Child Care Benefit (CCB) and Child Care Tax Rebate (CCTR));
- financial assistance to certain types of child care services in terms of establishment and operating costs;
- funding of various quality assurance and professional support mechanisms for child care providers;
- extra support in remote and rural areas for both providers and families;
- extra support for those with special needs; and
- funding of various information services.

2.6 Since its election in November 2007, the Australian Government has been working toward improving the quality and consistency of care and learning across all early childhood services and increasing the number and qualifications of the early childhood workforce.

¹ Summary of findings, ABS Cat No. 4402.0 - Child Care, Australia, June 2005 Second Reissue.

² Evidence from Australian Child Care Association, AIRC transcript, Award Modernisation Proceedings, 29 May 2008.

³ Summary of findings, ABS Cat No. 4402.0 - Child Care, Australia, June 2005 Second Reissue.

2.7 Throughout 2008 the Government consulted widely with the child care sector, early childhood teachers, parents, academics and other experts in relation to the development of a National Quality Framework for child care.

2.8 In the 2008-09 Budget, the Government committed \$126.6 million to deliver workforce initiatives that will increase the number of early childhood professionals, provide workers with opportunities to upgrade their qualifications and create incentives for early childhood teachers to work in areas of disadvantage.

2.9 Overall, the Government is investing \$2.4 billion over five years to deliver:

- assistance to working families to meet higher costs of living by increasing the Child Care Tax Rebate (CCTR) from 30 per cent to 50 per cent of out of pocket costs to a maximum of \$7 500 per annum;
 - the rebate will now also be paid quarterly and is not means tested;
- universal access to 15 hours-a-week, 40 weeks-a-year of affordable, quality early learning programs, delivered by a four-year university-trained teacher, for all Australian children in the year immediately before school;
- a National Quality Framework for early childhood education and care including National Quality Standards, a ratings system, an Early Years Learning Framework and streamlined accreditation and licensing; and
- initiatives to increase the supply and upgrade the skills and qualifications of the early years workforce.⁴

Child care labour force

2.10 Table 1 below shows that in November 2008, 97 200 employees were recorded in the child care services industry sector. Of these, 96 per cent were female.

2.11 The larger states, Queensland (QLD), New South Wales (NSW) and Victoria (VIC) accounted for over 80 per cent of total employees in the child care sector across Australia. South Australia (SA) recorded only 4 000 child care employees and Tasmania (TAS), the Northern Territory (NT) and the Australian Capital Territory (ACT) recorded less than 2 000 child care employees.

2.12 Average hours worked differs between the states and territories. For example, in the two states with the highest number of child care employees, VIC records average hours per week of 26.7 compared to a NSW average of 32.6 hours per week. This may largely be explained by the mix of part-time and full-time employees across the sector.

2.13 Further disaggregation of employees by employment status (see Table 1a below) shows the proportion of child care employment that is full-time also varies between the states and territories. In VIC full-time employment constituted 53 per cent of child care employment in November 2008 while in NSW the full-time proportion was 63 per cent. TAS recorded the lowest proportion for full-time child care employment of

⁴ Media Release: "Child care sector encouraged to implement Governments early childhood reforms", The Hon Maxine McKew MP, Parliamentary Secretary for Early Childhood Education and Child Care, 25 November, 2008.

28 per cent in November 2008 while the ACT recorded the highest full-time child care employment proportion of 79 per cent.⁵

Table 1: Total number of employees and hours worked, by state and sex (November 2008)⁶ – Child care services ANZSIC 871

		NSW	VIC	QLD	SA	WA	TAS	NT	ACT	Total
Employed Total ('000)	Males	1.8	1.1	0.8	-	0.2	-	0.1	-	3.9
	Females	27.6	22	27.6	4	7	1.8	1.8	1.4	93.3
	Total	29.4	23.1	28.4	4	7.2	1.8	1.9	1.4	97.2
Hours Worked (000h)	Males	65.7	14.3	11.5	-	0.6	-	5.7	-	97.8
	Females	892.9	602.5	813	117.6	205.4	51.5	54.5	47.2	2784.7
	Total	958.6	616.8	824.5	117.6	206.1	51.5	60.1	47.2	2882.5
Average Hours	Males	36.9	13.4	15.3	-	4	-	60	-	25.4
	Females	32.3	27.4	29.4	29.8	29.3	29	29.5	32.6	29.8
	Total	32.6	26.7	29	29.8	28.7	29	31	32.6	29.7

Table 1a: Total number of employees by employment type (November 2008)⁷ – Child care services ANZSIC 871

		NSW	VIC	QLD	SA	WA	TAS	NT	ACT
Employed Total ('000)	Full Time ('000)	18.6	12.2	16.1	2.3	3.7	0.5	1.1	1.1
	Part Time ('000)	10.8	10.9	12.3	1.6	3.5	1.2	0.9	0.4
	Total	29.4	23.1	28.4	4	7.2	1.8	1.9	1.4
Employed Total (%) ⁸	Full Time	63%	53%	57%	58%	51%	28%	58%	79%
	Part Time	37%	47%	43%	40%	49%	67%	47%	29%

⁵ ABS Cat no. 6291.0.55.003 - Labour Force, Australia, Detailed, Quarterly, Nov 2008; Industry Group 871 Child care Services unpublished data.

⁶ ABS Cat no. 6291.0.55.003 - Labour Force, Australia, Detailed, Quarterly, Nov 2008; Industry Group 871 Child care Services.

⁷ Unpublished data, ABS Cat no. 6291.0.55.003 - Labour Force, Australia, Detailed, Quarterly, Nov 2008; Industry Group 871 Child care Services.

⁸ Due to ABS rounding protocols, totals may not equal 100 per cent.

3 Work Value and Equal Remuneration Cases

Introduction

3.1 Most child care workers across Australia were awarded wage increases based on work value grounds (in addition to annual minimum wage adjustments) under their respective state and federal awards following industrial tribunal decisions in 2005 and 2006. In NSW and QLD, claims for increased wage rates for child care workers were made under equal remuneration principles in the respective state industrial tribunals. These cases followed similar work value cases for child care workers in the Australian Industrial Relations Commission (AIRC), affecting child care workers employed under federal awards in the ACT, VIC, SA, NT and WA.

3.2 Effectively, the child care industry is the only industry to have experienced such a comprehensive, multi-jurisdictional assessment of job ‘worth’ through a series of work value cases in federal and state industrial tribunals.

Equal remuneration

Legislative provisions

3.3 The broad mix of public and private sector organisations providing child care services has resulted in a spread of legislative coverage across both state and federal jurisdictions for employers and employees. The industry is therefore subject to both state and federal provisions relating to equal remuneration.

3.4 Equal remuneration provisions were first introduced into the federal workplace relations legislation in 1994 giving effect to obligations under various international conventions. Prior to this, legal principles which underpinned the federal industrial tribunal’s wage fixing principles were established by two important test cases, the Equal Pay for Equal Work Case of 1969⁹ and the Equal Pay for Work of Equal Value Case of 1972¹⁰.

3.5 Equal remuneration provisions are primarily set out in Division 3 of Part 12 of the *Workplace Relations Act 1996* (WR Act). Some amendments to the legislation were made in 2006 by the *Workplace Relations Amendment (Work Choices) Act 2005* (Work Choices), reflecting the transfer of the federal minimum wage-fixing function from the Australian Industrial Relations Commission (AIRC) to the Australian Fair Pay Commission (Fair Pay Commission). Further detail on these provisions is provided in the DEEWR Principal submission.

3.6 Not all states incorporate equal remuneration provisions in their legislation, but instead, provide capacity to make claims for equal remuneration through the wage fixing and award variation principles of their respective industrial tribunals (NSW, WA, TAS and SA). QLD is the only state to expressly provide for the Queensland Industrial Relations Commission (QIRC) to make equal remuneration orders in their

⁹ Equal Pay Test Case 1969 (1969) 127CAR1142.

¹⁰ National Wage and Equal Pay Case 1972 (1972) 147CAR172.

legislation. Attachment A provides a table comparing the equal remuneration provisions in the current WR Act and the states in addition to the proposed federal provisions in the Fair Work Bill 2008 (the Bill).

3.7 The future operation of legislative provisions for equal remuneration in federal and state jurisdictions is relevant to the child care industry. The DEEWR Principal Submission to this inquiry details the current federal legislative provisions for equal remuneration and their interaction with federal and state industrial laws. The DEEWR Supplementary Submission details the prospective changes to the federal equal remuneration provisions under the Bill.

3.8 Significantly for the child care industry, current state and federal legislative provisions for equal remuneration differ.

3.9 Two principle differences between state and current federal provisions are:

- a) most state provisions for equal remuneration allow for orders to be made for work of equal or comparable value. Federal provisions currently allow for orders to be made for work of equal value only; and
- b) most state provisions operate in a way that does not require claimants to prove that discrimination had occurred in the setting of pay rates as a threshold issue for continuing a claim. In effect, state jurisdiction claims can proceed on the grounds that pay rates have been established because of the gendered nature of the job.
 - conversely, case history in the federal jurisdiction has shown that, to be successful in claims under the current provision, applicants require comparisons with male-dominated occupations and proof of active discrimination (on the basis of sex) in setting remuneration. The narrow scope of comparator groups and the threshold test of discrimination have proved to be significant obstacles to claims in the federal jurisdiction.

Wage fixing principles

3.10 Award variations based on ‘work value’ in the federal jurisdiction have historically relied on wage fixing principles rather than legislative provisions. ‘Work value’ cases have proved to be an alternative avenue to equal remuneration cases for pursuing wage claims in female dominated occupations or industries. Prior to the amendments introduced by the Work Choices legislation, the annual safety net review conducted by the AIRC would review and amend, as required, the wage fixing principles. Principle 6 of the 2005 Safety Net Review-Wages provided for award variations for “work value changes”.¹¹

3.11 As previously detailed, equal remuneration orders in NSW, WA, TAS and SA may be sought under their respective wage fixing principles rather than legislative provisions. NSW has supplemented the operation of their wage fixing principles with the establishment of a specific Equal Remuneration Principle, developed to address

¹¹ [Safety Net Review—Wages June 2005 \[PR002005\] - 7/6/05](#)

equal pay concerns in occupations and industries that are dominated by one gender. In QLD, an Equal Remuneration Principle has also been established and is included in the relevant industrial legislation. In both states, the Principles were established to address the undervaluation of work traditionally performed by women following extensive inquiries into pay equity.

3.12 The relevant wage fixing principles in NSW, QLD and SA include an expanded meaning of equal remuneration to include 'equal or comparable value'. The inclusion of equal remuneration for work of 'comparable value' in the principles and legislation enhances the scope and effectiveness of the equal remuneration provisions by removing historic obstacles to successful claims for equal remuneration, as experienced in the federal jurisdiction. Broadening the scope for job comparisons also removes the requirement of discrimination on the basis of sex, allowing comparisons to be carried out between different, but comparable, work for the purpose of assessing an equal remuneration claim.

3.13 A more detailed discussion of equal remuneration provisions, comparable value and work value claims is provided in the DEEWR Supplementary Submission on the Bill, submitted on 8 January 2009.

3.14 The following section provides the Committee with an overview of the most recent applications to vary child care awards under equal remuneration provisions and wage fixing principles on 'work value' grounds. The child care cases in the federal jurisdiction were run under traditional 'work value' and 'change in work value' principles. On the other hand, the cases in the NSW and QLD state jurisdictions were considered under the specific Equal Remuneration Principles referred to in paragraph 3.11 above.

Child care award variations

Federal jurisdiction

3.15 The AIRC has dealt with two key applications, under 'work value' principles, which sought to vary the Child Care Industry (Australian Capital Territory) Award 1998 (C2002/5237) and the Children's Services (Victoria) Award 1998 (C2003/4271) in relation to wage rates, classification structures, new allowances and the award titles. The decisions, handed down on 13 January 2005¹², 13 April 2005¹³ and 10 May 2005¹⁴, determined new rates of pay and classification structures for each award.

3.16 To establish a claim for a change in work value in these cases, the Australian Liquor, Hospitality and Miscellaneous Workers Union (the Union) argued that substantial issues had impacted on the work of child care workers, including: changes in licensing, accreditation and legislative requirements; socio-economic conditions impacting on levels and patterns of child care use; and increased government and societal expectations placed on the educative role of children's services and the importance of early childhood development. The Union argued that these changes

¹² AIRC PR95493.

¹³ AIRC PR957259.

¹⁴ AIRC PR957914.

impacted on the nature of work performed, in addition to requiring increased skills, knowledge and expertise, and thus constituted a significant net addition to work value.

3.17 Conversely, the employer organisations argued that such changes had not significantly altered the fundamental nature of the job. Nevertheless, the Full Bench of the AIRC found that "...the changes in the nature of work...constitute a significant net addition to work requirement within the meaning of the work value principle."¹⁵

3.18 In setting the revised pay rates and classification structures with regard to work value, the AIRC drew comparisons with the male-dominated Metals Industry Award. In order to align the new pay rates of child care workers with similarly qualified employees covered by the Metals Industry Award, the Full Bench of the AIRC identified the diploma level, i.e. Child Care Worker Level 4, as the key comparator classification. The award was then 'split' into two parts – certificate III and below, and diploma level and above.

3.19 It should be noted that the use of qualifications as a comparator was a major point of difference between the parties. For example, the employer organisations argued that a certificate III in the child care industry could not be considered equivalent to a certificate III in the metals industry. It stated that the qualifications were vastly different and that this was evident in the differing lengths of time to complete qualifications and in the differing conditions under which the work was performed. Stating that this argument was inaccurate when judged by the standards set by the Australian Qualifications Framework, the Full Bench were of the view that: "if anything, the nature of the work performed by child care workers and the conditions under which that work is performed suggest that they should be paid more, not less, than their Metals Industry counterparts."¹⁶

3.20 The parties ultimately reached agreement on new rates of pay and classification levels that resulted in wage increases of between five and sixteen per cent for child care workers covered by the two awards.

3.21 Drawing on this decision as a precedent, applications were made by unions to the SA and WA industrial tribunals seeking wage increases under their respective wage fixing principles for 'work value' and 'change in work value'.¹⁷ The SA and WA tribunals awarded child care workers in each state wage increases of between three and thirty percent.¹⁸

New South Wales

3.22 In 2004, the NSW Branch of the Union made an application to the NSW Industrial Relations Commission (NSW IRC) seeking to vary the awards for child

¹⁵ AIRC PR954938, para 366.

¹⁶ AIRC 954938, para 183.

¹⁷ SA: [2005] SAIRC Comm 49, WA: 2006 WA 05343.

¹⁸ In both decisions, the SA and WA tribunals agreed with the findings made by the Full Bench of the AIRC in relation to the case for new classification structures and wages. In the SA and WA decisions, the tribunals made independent decisions in regard to the specific wage increase awarded to child care workers in their respective state. Both the SA and WA tribunals also staggered the increases over a two year period.

care workers to include a new classification structure and increased wages to properly reflect the qualifications, skills and responsibilities of child care workers.¹⁹ The application was pursued under both the NSW IRC's work value wage fixing principle and the new Equal Remuneration Principle. A counter application by Employers First in NSW sought the making of a new award instead of varying existing awards.

3.23 As noted above, the NSW Equal Remuneration Principle does not require that applications prove discrimination or make comparisons. Rather, it allows for determinations to be made on the basis that pay rates had been established because of the gendered nature of the job.

3.24 Despite this, the Union initially drew wage comparisons with industries traditionally dominated by male employees. However, the Union's final position was to compare the wages of child care workers with those of teachers employed in the child care industry. The Union argued that the duties and functions of qualified child care workers had evolved to the extent that they should be compared with two-year trained teachers under the award.

3.25 To establish a claim for change in work value, the Union argued many of the points presented in the AIRC case outlined above.²⁰ In addition, the Union argued that the charitable origins of the industry and the associated gendered nature of the occupation have contributed to historical undervaluation of the work of child care workers. In relation to workers' comparatively low wages, the Union pointed to structural characteristics of feminised work, such as concentration in small workplaces, and an absence of certified agreements and over-award payments. Employers, on the other hand, argued that there was no justification for altering the existing classification structure.

3.26 In handing down its decision²¹, the NSW IRC reached two key findings similar to those in the AIRC decision. These were that there had been no previous work value assessments of employees covered by the relevant award and that the evidence presented established sufficient work value changes to satisfy the requirements under the Equal Remuneration Principle.

3.27 In 2006, the NSW IRC determined that the evidence on wages and conditions for child care workers supported a case of undervaluation on a gender basis. The Commissioners noted the importance to society of the work performed by the predominantly female workforce. The relatively low access to bargaining to achieve above-award rates was also taken into account. The NSW IRC further noted that no other explanation (beyond gender) had been offered by witnesses to explain the undervaluation of the work of child care workers in NSW.

3.28 In determining appropriate new rates of pay, the NSW IRC expressed the view that previous comparisons with the Metals Industry Award (in the AIRC Decision)

¹⁹ NSWIRC 2004/5757 and 2004/6500.

²⁰ For example, child care workers' licensing, accreditation and legislative requirements; the socio-economic conditions impacting on levels and pattern of child care use; and increased government and societal expectations placed on the educative role of children's services and the recognition of the importance of the early years.

²¹ [2006] NSWIRComm 64.

did not sufficiently reflect the value of work done by child care workers. Rather, the NSW IRC was satisfied that the assessment of work value should be considered in the context of awards applying to teachers, as advocated by the Union. The NSW IRC awarded substantial wage increases for NSW child care workers of between sixteen and fifty per cent. The most substantial increases in wages were awarded to qualified centre coordinators and child care workers who were qualified at diploma level. The wage increases were staggered over a two year period, with employees being granted four per cent increases in March and September of each year.²²

Queensland

3.29 The AIRC and NSW decisions discussed above provided important precedents for the consideration of child care workers' pay rates in relevant QLD awards. In 2003 the QLD branch of the Union made an application to the QIRC to vary the QLD Child Care Industry Award – State 2003 under the QIRC's newly adopted Equal Remuneration Principle.²³ The application was also pursued under the QIRC's Work Value Principle, which formed part of the broader wage fixing principles.

3.30 The Equal Remuneration Principle enabled the QIRC to make equal remuneration orders with respect to work of comparable value, not just equal value. The Equal Remuneration Principle is clear that comparisons within and between occupations and industries are not required in order to establish undervaluation of work on a gender basis.

3.31 To establish a claim for a change in work value, the Union focussed on the award history and work value issues, including an attempt to consider in a gender neutral way many of the 'soft' skills which, according to the Union, had traditionally been undervalued. Such skills included nurturing, caring, domestic skills, communication and interpersonal skills, multi-tasking, close concentration and organisation skills. The Union emphasised that limited access to collective bargaining was one of the significant factors underpinning the present undervaluation. Employer organisations opposed the claim that the work of child care workers was undervalued.

3.32 In handing down its decision²⁴, the QIRC found that work performed by child care workers had historically been undervalued, based on the gender of the workers, and that the conditions under which the work is performed had not been adequately taken into account in assessing the value of work.

3.33 In setting new wage rates, the QIRC held that achieving pay equity needed to be balanced against the 'public interest' of ensuring children's services are affordable and accessible to parents. It awarded less generous wage increases than in NSW (between six and twenty per cent).

²² Ibid.

²³ Case No B/2003/2133.

²⁴ (2006) 182 QGIG 318. (made 27 June 2006).

4 Wage outcomes in collective and individual agreements

Industry labour force data

4.1 The DEEWR Principal Submission to the Inquiry provided details of reports and surveys relevant to the Inquiry and also provided information on current data sources used by DEEWR for labour force participation, wages and coverage by industrial instruments. The data used by DEEWR are largely sourced from the Australian Bureau of Statistics (ABS).

4.2 For ABS data, the child care sector is identified in the ANZSIC classification structure for industries at the three digit level (871: child care services). At this level of disaggregation the size of the survey data sets can produce high standard errors that impact on the reliability of available data. For example, Table 2 provides wages data for the child care services industry and data for the child care provider occupation at three digit level, but for both the data is only available for full-time employees.

4.3 For some purposes, including reporting on industrial instrument coverage, this submission uses data at the two digit level – for ANZSIC classification 87: Community services. The Community services sector includes child care services and “other social assistance services” such as adoption, aged care assistance, disabilities assistance, marriage guidance and welfare counselling, services. Child care services constitutes approximately 35 per cent of employment in this broader industry category.

Average earnings and gender wage gap

4.4 Published data from the ABS *Employee Earnings and Hours* survey, reproduced in Table 2 below, show that average weekly earnings for full-time²⁵ adult non-managerial employees in the Child care services industry were \$694.00 and \$655.90 for those in the child carers occupation in May 2006. The respective average hourly rates were \$18.20 and \$17.30.

4.5 A gender wage gap is apparent in both the industry (19 per cent gap) and occupation (13 per cent gap) data, but is significantly higher based on industry.

4.6 The DEEWR Principal Submission to the Inquiry provided data on the gender wage gap across all industries for full-time adult employees. In May 2008 Australia’s gender wage gap stood at 16.2 per cent for weekly earnings and around 11 per cent for hourly earnings.²⁶

²⁵ Data are not available for part-time employees, who comprised a majority (53.2 per cent) of the 82,500 employees in the Child care services industry in May 2006.

²⁶ Latest data for August 2008 show that Australia’s gender wage gap stood at 16.7 per cent for weekly full-time adult earnings and around 12 per cent for hourly earnings.

Table 2 : Average weekly and hourly cash earnings²⁷, and hours paid for, full-time adult non-managerial adult employees (May 2006)²⁸

	<i>Child care services industry (ANZSIC 871)</i>	<i>Child carers occupation (ANZSCO 421)</i>
Males		
Cash earnings	\$847.00	\$747.10
Hours worked	38.1	38.0
Hourly cash earnings	\$22.30	\$19.70
Females		
Cash earnings	\$692.20	\$653.20
Hours worked	38.1	37.9
Hourly cash earnings	\$18.10	\$17.20
Persons		
Cash earnings	\$694.00	\$655.90
Hours worked	38.1	37.9
Hourly cash earnings	\$18.20	\$17.30
Female proportion of total employees	97.6%	96.0%
Gender wage gap		
Hourly cash earnings	0.19	0.13

Industrial instrument coverage

4.7 The introduction of Work Choices in 2006 resulted in many employers and their employees moving from various state industrial jurisdictions into the federal jurisdiction. This movement into the federal jurisdiction was in the main based on whether the employer was a constitutional corporation. However, some state employees, for example those in not-for-profit centres and some local government run centres, remain covered by state awards and some employees and employers transferred from the federal to state workplace relations systems.

4.8 The Work Choices legislation also removed wage rates and classification structures from awards and included them in Australian Pay and Classification Scales (APCS). For child care employees in the federal jurisdiction, minimum conditions of employment may be derived from legislated minima and federal awards while minimum rates of pay are derived from the relevant APCS.

4.9 Table 3 below demonstrates the significance of award coverage with 45.1 per cent of employees²⁹ in the Community services industry reliant on awards for pay-setting arrangements compared to an all industry average of 19.0 per cent. (Note: these data are from 2006). Award reliance is indicative of reliance by employees on APCS for minimum wages.

²⁷ Comprises regular wages and salaries in cash, including amounts salary sacrificed.

²⁸ ABS Cat. no. 6306.0 Employee Earnings and Hours, Australia, May 2006, datacubes 1a, 1b and 2.

²⁹ In this section 'employees' refers to adult non managerial employees.

4.10 Award reliance differs by gender within the industry, with 46.4 per cent of female employees being award reliant compared to 38.7 per cent of male employees. Average award reliance across all industries is 23.4 per cent for female employees compared with 14.7 per cent for males.

4.11 Collective agreement coverage is also significant in the Community services industry: 39.6 per cent of female employees and 42.2 per cent of male employees are covered by a collective agreement. However, the proportion of female employees within the industry reliant on collective agreements is below the all industry average of 44.5 per cent of all female employees (37.9 per cent of all male employees). Note, collective agreements comprise state and federally registered agreements and unregistered agreements.

4.12 Unregistered individual arrangements (including contract employment and over award arrangements) cover 13.5 per cent of employees in the industry with little difference evident between genders. Federally registered individual agreements, or Australian Workplace Agreements (AWAs), cover 1.1 per cent of male employees and 0.8 per cent of female employees in the industry.

Table 3 : Methods of setting pay, adult non-managerial employees, (May 2006)³⁰, Community services industry

Methods of setting pay	Male		Female		Persons	
	('000)	(per cent)	('000)	(per cent)	('000)	(per cent)
Collective Agreement (Federally registered)	10.1	24.8	49.4	24.9	59.5	24.9
Individual Agreement (Federally registered)	0.4	1.1	1.6	0.8	2.1	0.9
Collective Agreement (State registered)	7.1	17.4	21.4	10.8	28.6	11.9
Individual Agreement (State registered)	0.0	0.0	0.0	0.0	0.0	0.0
Individual Agreement (Unregistered)	6.1	14.9	26.2	13.2	32.2	13.5
Working Proprietors	0.0	0.0	0.0	0.0	0.0	0.0
Collective Agreement (Unregistered)	n.p.	n.p.	7.7	3.9	9.0	3.8
Award Only	15.8	38.7	92.2	46.4	108.1	45.1
Total	40.9	100.0	198.6	100.0	239.4	100.0

Minimum wages in federal and state awards

4.13 Minimum wage rates in both federal and state jurisdictions are set and adjusted by independent industrial tribunals. In the federal jurisdiction, this responsibility currently lies with the Australian Fair Pay Commission and prior to 2006 was undertaken by the AIRC. Under the Government's proposed new workplace relations system, responsibility for setting and adjusting minimum wages will transfer to a Minimum Wages Panel within Fair Work Australia. The various state industrial tribunals are responsible for setting and adjusting minimum wages for employees within their respective jurisdictions.

4.14 In addition, as discussed above, most child care workers have received special award variations in 2005 and 2006 through work value and equal remuneration cases.

³⁰ ABS Employee Earnings and Hours (Cat. No. 6306.0) May 2006, unpublished data.

4.15 As a result, minimum wages in child care awards generally differ between federal and state jurisdictions and between states. These differences are largely the product of the traditionally independent industrial relations systems in Australia, but in recent years they have also been affected by several key factors including the work value cases and jurisdictional changes resulting from the Work Choices legislation.

4.16 An analysis of minimum wage rates in all child care awards and APCS shows that employees covered by federal awards/APCS are generally paid less than their state system counterparts. For ease of comparison, we have analysed the award wages for child care workers at the basic, diploma, director and experienced director (maximum pay) levels.³¹ As the classifications and pay levels within federal and state awards differ substantially in their definition, required qualifications and level of work experience, the following analysis is an interpretation of the various classifications and wages in awards as published on respective websites.³² The analysis indicates that, in 2008:

- on average, child care workers at all levels covered under state awards have higher minimum wages than their federal award counterparts (approximately between one and six percent); and
- the highest minimum wages at all levels are paid to employees in NSW and QLD.
 - for example, average weekly award rates of pay vary at:
 - the basic level, wages vary from \$556.70 (federal Children’s Services (ACT) Award 2005) to \$677.33 (NSW State Miscellaneous Workers’ Kindergartens and Child Care Centres (State) Award);
 - the diploma level, wages vary from \$701.86 (Queensland Child Care Industry Award – State 2003 (NAPSA³³)) to \$774.40 (WA State Children’s Services (Private) Award 2006);
 - the director level, wages vary from \$812.82 (Tasmanian Child Care and Children’s Services Award (NAPSA)) to \$940.70 (WA State Children’s Services (Private) Award 2006); and
 - the maximum award wages vary from \$911.24 (Tasmanian Child Care and Children’s Services Award (NAPSA)) to \$1093.21 (NSW State Miscellaneous Workers’ Kindergartens and Child Care Centres (State) Award).³⁴

³¹ For the purposes of this analysis, ‘basic level’ is defined as entry level, unqualified child care worker. ‘Diploma level’ is defined as the first level at which a child care worker holds a diploma qualification. ‘Director level’ is the first level at which an employee is responsible for directing a centre (may be described as centre coordinator). The ‘director (maximum pay) level’ is the maximum wages awarded to a director or centre coordinator under the award. At each level, the first pay step has been used.

³² 2008 federal APCS:

<http://www.workplaceauthority.gov.au/graphics.asp?showdoc=/PayAndConditions/PayandConditionsIndex.asp#index13> NSW state awards: <http://www.lawlink.nsw.gov.au/irc>
QLD state awards: <http://www.qirc.qld.gov.au/> WA state awards: <http://www.wairc.wa.gov.au/>
SA state awards: <http://www.industrialcourt.sa.gov.au/>
TAS state awards: http://www.tic.tas.gov.au/about_us

³³ A NAPSA is a notional agreement preserving state awards. It is the term applied to state awards which moved into the federal workplace relations system as a result of the Work Choices Legislation.

³⁴ The rates derived from federal awards (including NAPSAAs) are current 2008 APCS.

Industrial agreements and wages

4.17 Table 4 below illustrates the average wage rates set under various industrial instruments for employees³⁵ employed in the Community services industry. The table shows that female employees covered by state and federal collective agreements are paid higher average weekly wages than those employed under individual agreements and awards. It is worth noting that women's average weekly wages under federally registered individual agreements are lower than women's average weekly wages under awards.

4.18 ABS *Employee Earnings and Hours* data recorded average earnings for employees reliant on awards of \$555.90 in the Community services industry (incorporating child care). The gender wage gap for award covered employees in the industry is 6.9 per cent on weekly earnings and 2.5 per cent on hourly earnings.

4.19 The DEEWR Principal Submission noted that high award reliance among female employees contributes to the gender wage gap at an aggregate level but that within award coverage the gender wage gap for women is positive. The gap for female employees is -2.1 per cent among all award covered non-managerial employees.

4.20 The hourly gender wage gap under individual agreements within the industry is high at 17.6 per cent for federally registered individual agreements (AWAs) and 44.8 per cent for unregistered individual agreements.

4.21 This is considerably higher than the all industry hourly gender wage gaps under individual agreements reported in the DEEWR Principal Submission although, of themselves, these were also high relative to the hourly gender gaps under other industrial instruments. The DEEWR Principal Submission reported an hourly gender wage gap under AWAs of 11.3 per cent and under unregistered individual agreements of 15.0 per cent.

4.22 The data in Table 4 also show that women covered by state registered collective agreements are paid, on average, \$3.00 per hour more than men. This is the only instance in this Table where women are paid more than men.

4.23 The table shows that the weekly gender wage gap in the industry under federally registered collective agreements, is 19.8 per cent or \$149.80 per week. The DEEWR Principal Submission reported an all industry weekly gender wage gap under federally registered collective agreements of 10.7 per cent.

³⁵ In this section "employees" refers to adult non managerial employees.

Table 4 : Wage rates and the gender wage gap (GWG) by industrial instrument, adult non-managerial employees, (May 2006)³⁶

	AWOTE ² \$				AHOTE ³ \$			
	Male	Female	Persons	GWG	Male	Female	Persons	GWG
Collective Agreement (Federally registered)	757.80	608.00	633.50	19.8	26.70	23.60	24.20	11.6
Individual Agreement (Federally registered)	958.40	541.50	632.60	43.5	25.50	21.00	22.30	17.6
Collective Agreement (State registered)	570.40	557.70	560.90	2.2	17.40	20.40	19.60	-17.2
Individual Agreement (State registered)	-	-	-	-	-	-	-	-
Individual Agreement (Unregistered)	974.60	523.80	608.80	46.3	35.30	19.50	22.60	44.8
Working Proprietors	-	-	-	-	-	-	-	-
Collective Agreement (Unregistered)	700.50	472.00	503.90	32.6	23.30	20.80	21.30	10.7
Award Only	529.90	493.50	498.80	6.9	19.70	19.20	19.20	2.5
Total	669.70	532.50	555.90	20.5	23.40	20.50	21.10	12.4

1: Data includes child care sector and other social assistance services employees.

2. Average Weekly Ordinary Time Earnings

3. Average Hourly Ordinary Time Earnings

Work value cases and agreements

4.24 A small sample of federal collective agreements in the child care sector show that the wage increases awarded as a result of the work value cases described earlier in this submission have generally been passed onto employees covered by agreements.³⁷ However, the sample also indicates that a majority of employees employed under the sample collective agreements continue to be paid award equivalent rates of pay. Collective agreements do not appear to have resulted in higher wages than minimum award rates for child care workers.

4.25 The Government has acknowledged that many employees in industries like child care and community work, which typically employ women, part-timers, casuals or recent migrants, struggle to effectively bargain with their employers and often remain covered by minimum award rates and unfavourable conditions.³⁸

4.26 The Government has also acknowledged there are significant challenges to be addressed to build capacity in the early childhood workforce. Job turnover is high, with over one-in-five child care workers leaving the occupation every year; pay and status in the profession are low; and enrolments in diploma child care courses have been falling.³⁹

4.27 The Government is committed to working with state counterparts and other stakeholders in the child care industry to attract and retain staff, and to invest in their skills and development.⁴⁰

³⁶ ABS Employee Earnings and Hours (Cat. No. 6306.0) May 2006 (ANZSIC 87), unpublished data.

³⁷ Sample consisted of ten federal collective agreements (at enterprise level), with at least one from each state and territory. All agreements published on the Workplace Authority website www.workplaceauthority.gov.au.

³⁸ The Hon Julia Gillard MP, Speech: Introducing Australia's New Workplace Relations System, The National Press Club, Canberra, 17 September 2008.

³⁹ The Hon Julia Gillard MP, Speech: Launch of LHMU Big Steps in Childcare Campaign, Sydney, 20th June 2008.

⁴⁰ Ibid.

5 Fair Work Bill 2008

5.1 The Fair Work Bill 2008 (the Bill) was introduced into the House of Representatives on 25 November 2008 and was passed by the House on 4 December 2008. The Bill will completely replace the *Workplace Relations Act 1996* (WR Act), and is intended to form the basis of a modern, fair and flexible system. The new system will commence on 1 July 2009 and will be fully operational from 1 January 2010.

5.2 The Bill gives effect to the *Forward with Fairness* policy commitments the Government took to the election in 2007 and follows on from earlier transitional legislation, the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008*, that commenced operation on 28 March 2008.

5.3 Many measures proposed in the Bill will directly and indirectly support the pursuit of pay equity. For the child care industry, pay equity among employees *within* the industry is not a significant issue as the industry is heavily dominated by female employees. However, relativity between child care workers and other groups of employees may raise issues of equity and in this context the Bill is likely to support the improvement of wages, conditions and security of employment for child care workers.

5.4 The high award coverage within the sector is particularly significant given the award variations that have occurred among child care awards in both state and federal jurisdictions in recent years. It is apparent that wage outcomes in the child care sector have been focussed at the minimum wage level. The provisions of the Bill in relation to the minimum safety net, award variation and assistance for low paid industries in agreement making which will be especially relevant to the child care sector include:

- Modern awards, which will build on the 10 National Employment Standards (the NES) providing industry relevant detail, including minimum wages that allow for skill based classifications.
- A new independent agency, Fair Work Australia, will have responsibility for modern awards including minimum wages. This new agency will be required to review minimum wages in an open and transparent process once a year. Fair Work Australia will also be required to review modern awards every four years to ensure they remain relevant to those covered by them.
- Award wages can generally only be varied in an annual wage review. However some limited exceptions include where Fair Work Australia is satisfied that: there are work value reasons that justify the variation; and variation outside the annual wage review process is necessary in order to achieve the modern awards objective of a fair and relevant safety net.
- Work value reasons are reasons justifying the amount an employee should be paid for performing a particular kind of work that relate to: the nature of the work; the level of skill or responsibility involved; and the conditions under which work is performed.

- The Government's new workplace relations system will also facilitate multi-employer collective bargaining for low paid employees or employees who have not historically had access to the benefits of collective bargaining, including those in the child-care sector.
- While the enterprise will continue to be the focus of most collective bargaining under the new system, multi-employer agreements will help ensure that employees and employers in key industries can take advantage of the opportunities for greater flexibility and improved pay and conditions based on improvements to productivity that collective bargaining can provide.
- The Government recognises that the Australian Liquor, Hospitality and Miscellaneous Workers Union has been successful in negotiating collective agreements with some of the larger employers in the child care industry. However, in the main, collective agreements are not widespread within the industry.
- Multi-employer bargaining for the low paid will provide an opportunity for the childcare sector to enjoy improved pay and conditions above the minimum safety net that will be provided by modern awards and the NES.

Award modernisation

5.5 Modern awards, along with the 10 National Employment Standards, will provide a strong, simple and fair safety net. The award modernisation process involves the AIRC reviewing all federal awards and many state awards operating as NAPSAs. Enterprise awards will not be considered as part of award modernisation. They will be dealt with as part of the transitional and consequential arrangements.

5.6 The award modernisation process commenced when the Minister for Employment and Workplace Relations signed a formal request to the President of the AIRC on 28 March 2008 pursuant to s.576C of the WR Act. The request provides guidance to the AIRC on the nature and function of modern awards and on the process generally. It was amended on 16 June 2008 and 19 December 2008.

5.7 The request directs the AIRC, when conducting the award modernisation process to:

- consult with major employee and employer representative bodies on the best process to follow;
- consult with major workplace relations stakeholders and other interested parties on priority industries and occupations for award modernisation, a model flexibility clause and the timetable for the process;
- determine priority industries and occupations for award modernisation, a model flexibility clause and overall timetable;
- consult with stakeholders and interested parties on exposure drafts of modern awards; and
- create modern awards.

5.8 The entire award modernisation process is due to be completed by 31 December 2009.

5.9 In June 2008, the AIRC, among other things, established a list of priority industries and occupations and laid down a timetable for the making of modern awards in relation to those industries and occupations. The dates for pre-drafting consultation in relation to those industries and occupations were subsequently altered in a statement issued on 22 July 2008.

5.10 The child care industry is not on the award modernisation priority list at this stage. Child care is not separately identified in the Stage 4 industries listed for award modernisation and falls into the Health and welfare (remainder) industry classification in the Stage 4 list. Stage 4 of the award modernisation process will be conducted between July and December 2009.

5.11 While the AIRC has not identified child care as an industry that will have its own modern award, submissions to the AIRC have argued for this approach. The Australian Childcare Centres Association submitted that child care “should be treated separately and distinctly with a view to trying to attain and achieve one common national award.”⁴¹

5.12 The principal unions and employer organisations within the child care sector are actively participating in the award modernisation process.

⁴¹ Award Modernisation, 29 May 2008, AIRC transcript.

ATTACHMENT A

Equal Remuneration – State and federal legislation and wage fixing principles

	Fair Work Bill	WR Act 1996	NSW Industrial Relations Act 1996	Queensland Industrial Relations Act 1999
DEFINITIONS	Equal remuneration for work of equal or comparable value means equal remuneration for men and women employees for work of equal or comparable value (302(2)) Remuneration encompasses wages and other monetary entitlements (ex memo)	Equal remuneration has the same meaning as in the equal Remuneration convention (623(2))	Pay Equity = equal remuneration for work of equal or comparable value	Equal remuneration for work of equal or comparable value means equal remuneration for men and women employees for work of equal or comparable value (59)
PROVISIONS FOR EQUAL REMUNERATION ORDERS ?	Yes (302) FWA may make an order requiring equal remuneration	Yes (624) AIRC may make an order to secure equal remuneration	No equal rem provisions in the Act. NSWIRC may make orders under wage fixing principles.	Yes (60(1)) QIRC may make any order to secure equal remuneration
COMPARABLE VALUE ?	Yes	No	NA – no provisions in Act. However, while wage fixing principle does not specify equal or comparable value it is broad enough to encompass comparable value	Yes
ORDERS MAY STAGGER WAGE INCREASES	Yes (304)	Yes (629)	N/A – no provisions in Act. However, wage fixing principle 14(i) allows phased increases.	Yes (63)
OTHER ?	FWA must take into account decisions of the minimum wage panel.	Any orders must be consistent with AFPC decisions (622) Must attempt conciliation (626)	In making equal rem orders the Commission is to determine application of future State Wage Case increases.	The Queensland principle provides a more proactive role for the QIRC in satisfying itself that the principle of equal remuneration has been met in awards or agreements.

ANTI DOUBLE DIPPING?	Yes (721)	Yes (621)	No	Yes (66(1)) – limited to where an application is already underway for an alternative remedy
EQUAL REMUNERATION AS GUIDING OBJECTIVE	Principle of the modern awards objective (134(1)(e)) and Principle of the minimum wages objective (284(1)(d))	An object of the equal rem division (620) AFPC must apply principle (222(1)) and AIRC must take principle of equal pay for work of equal value in performing its functions (104(b)) and in relation to award modernisation (576B(2)(e))	Principal Object of the Act (3 (f))	
EQUAL REMUNERATION IN AWARDS	Yes - as a Principle of the modern awards objective (134(1)(e))	No - Work Choices removed wages from awards	Awards must have equal rem (21) & (23) Commission to review awards for matters including equal rem (19)	Commission must ensure award provides equal rem (126(e))
EQUAL REMUNERATION IN AGREEMENTS	No legislative requirement	No legislative requirement	No legislative requirement	Commission must not certify unless agreement provides equal rem (156(1)(m))
COMMISSION WAGE FIXING PRINCIPLE ?	In legislation - Principle of the minimum wages objective (284(1)(d))	AFPC required to apply equal rem principle in wage-setting (222(1)(a))	Yes – Principle 14 in 2008 State Wage Case	Yes – wage fixing principles are expressed in the legislation 128(1)
OTHER RELATED MEASURES	A term of an award or agreement has no effect where inconsistent with an equal rem order (306) FWA may vary award or agreement if discriminatory or on referral from human rights commissioner	Award modernisation request requires AIRC to consider equal rem principle	No	No

Qld: http://www.austlii.edu.au/au/legis/qld/consol_act/ira1999242/

NSW: http://www.austlii.edu.au/au/legis/nsw/consol_act/ira1996242/

NSW State Wage case 2008

<http://www.lawlink.nsw.gov.au/ircjudgments/2008nswirc.nsf/c1b955f60eccc5fcca2570e60013ad15/1948edf2ecfb8e56ca2574750014fb9b?OpenDocument>

Fair Work Bill: <http://www.workplace.gov.au/NR/rdonlyres/F902366C-E559-481D-8C99-19D8DFC431EA/0/fwbill2008.pdf>

WR Act: <http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/448F63F71820F3EFCA25713B00115508?OpenDocument>

	Western Australia - Industrial Relations Act 1979	Tasmania Industrial Relations Act 1984	SA Fair Work Act 1994
DEFINITIONS	No	No	No
PROVISIONS FOR EQUAL REMUNERATION ORDERS ?	No equal rem provisions in the Act.	No equal rem provisions in the Act.	No equal rem provisions in the Act.
COMPARABLE VALUE ?	Yes (50A(3)(a)(vii))	Wage fixing principle lists equal value only. However, the principle does provide for gender undervaluation and does not require discrimination to be proved as a threshold test for a claim.	Yes (3(1)(n)) principal object
ORDERS MAY STAGGER WAGE INCREASES	N/A No equal rem provisions in the Act.	N/A No equal rem provisions in the Act.	N/A No equal rem provisions in the Act.
OTHER	No	No	No
ANTI DOUBLE DIPPING PROVISION ?	N/A No equal rem provisions in the Act	N/A No equal rem provisions in the Act	N/A No equal rem provisions in the Act
EQUAL REMUNERATION AS GUIDING OBJECTIVE	Principle object of Act (6(ac))	Act requires commission to act according to "equity" (36)	Yes (3(1)(n)) principal object ILO Convention forms Schedule 6 of the Act
EQUAL REMUNERATION IN AWARDS	Award pay rates must provide equal rem (50A(3)(vii))	Awards subject to provisions of other Acts including Anti Discrimination Act 1998 (42)	Remuneration fixed by award must be consistent with equal rem convention (69) Commission must apply equal rem in making an award regulating remuneration (90A)
EQUAL REMUNERATION IN AGREEMENTS	No	No	Remuneration fixed by agreement must be consistent with equal rem convention (69)
COMMISSION WAGE FIXING PRINCIPLE ?	Yes – wage fixing principles in legislation (50A(3)(a)(vii)) Also in commission order at Principle 10	Yes. Principle 10: Pay Equity = equal remuneration for men and women doing work of equal value	Yes (principle 4.9) "to vary an Award to provide for equal remuneration for work of equal value"
OTHER RELATED MEASURES	pay rates for MCE Act must provide equal rem (50A(3)(vii))	No	Remuneration fixed by contract must be consistent with equal rem convention (69)

SA: http://www.austlii.edu.au/au/legis/sa/consol_act/fwa1994114/

SA 2005 State wage case (reviewed wage fixing principles)
[http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/sa/SAIRComm/2005/29.html?query=wage per cent20case](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/sa/SAIRComm/2005/29.html?query=wage%20per%20cent20case)

WA: Minimum Conditions of Employment Act http://www.austlii.edu.au/au/legis/wa/consol_act/mcoea1993365/
and Industrial Relations Act http://www.austlii.edu.au/au/legis/wa/consol_act/ira1979242/

WA 2008 State wage case decision: <http://www.wairc.wa.gov.au/WageCase/SWC2008/DirectionsDecisions.aspx>

Tasmania: http://www.austlii.edu.au/au/legis/tas/consol_act/ira1984242/

Tasmanian wage fixing principles 2008: http://www.tic.tas.gov.au/decisions_issued/state_wage_case_decisions/principles_2008