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To: Committee Secretary
Standing Committee on Employment and Workplace Relations

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

From: Ms Jeane Wells

Dear Committee Secretary,

I wish to make submissions regarding the terms of reference to the Committee Inquiry into pay equity and associated issues related to increasing female participation in the workforce. I wish to commend the Committee on establishing the inquiry, and thank you for the opportunity to do so.

For fourteen years, I have worked as an advocate for women's participation within the workforce as a member of the trade union movement. This experience, combined with legal research undertaken in my law degree, leads me to the following recommendations, for the consideration of the Committee.

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

I would like to recommend the revival of the Australian Workplace Industrial Relations Survey, which provided an invaluable and accurate account of the variety of modes of employment, work practices and work organisation which impacts upon women's participation in the workplace. I recommend the revival of this research, to be conducted by the Department of Education, Employment and Workplace Relations.

Further, I recommend that the newly named Human Rights Commission should receive increased resources for assisting in the monitoring of women's experiences at work.

Finally, I recommend that Fair Work Australia, in monitoring an effective pay equity principle in the federal jurisdiction (see below), should also have dedicated resources to ensure its effective implementation

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

I recommend this issue be dealt with by the provision of information of a strong, effective pay equity principle as recommended below.

- Current structural arrangements in the negotiations of wages that may impact disproportionately on women

- 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

In relation to the above two terms of reference of the Inquiry, I note that the current minimal regulation of paid work and unpaid caring work results in workers with caring responsibilities, in the majority women; unable to participate equitably in the workforce. There are few provisions in industrial law for these employees, and these rare provisions have deteriorated further in the last decade. Employees require greater regulation of working hours, in order to equitably balance paid work and unpaid caring work.

The information in the section arises from a conference paper I wrote regarding employees' rights to part time work in Australia, and presented to the Our Work Our Lives Conference 2007 (Adelaide). I have attached this paper and related references to this submission (see attached documents).

I recommend that the features of the Netherlands model, *The Adaptation of Working Time Act* (Netherlands, 2000) is a suitable legislative framework for providing a right to permanent part time work, through a universal right to adaptable working hours. Adaptable working hours for all employees would mean that all women would be able to participate equitable in the work force, with no disadvantage in pay and conditions due to enjoying the job security, pay and employment condition benefits of full-time permanent employees.

The structural arrangements of our workplaces assume a worker without caring responsibilities. Legislation is required to affect this change, illustrating to employers and employees that 'the legislator restricted the entrepreneurial freedom of the employer' (Burri et al., 2003, p332) for the purpose of ensuring workplaces structurally accommodate part time work and full time work equally. Changing the structure of our workplaces is particularly important for women, who are in the main the workers with caring responsibilities, as confirmed by Bittman (2004).

The OECD has noted the growth of casual work in Australia (OECD Background Report, 2002, p. 10). In a workforce of insecure work, the cost of participation is carried by women: 'On the whole, Australian mothers have made most of the adjustments to reconcile work and family responsibilities.'(OECD, 2002, p.24) This can be shown in their over representation in non-permanent work, such as unregulated part time work.

The insecurity and inferior status of casual work, and that part time work is most often casual, has been observed: 'The distinctive mark of poor conditions is casual status. Around two-thirds of all part time jobs are casual.'(Charlesworth et al: 2002, p.35) This 2002 research has shown that 45% of female employees work part time, and that the majority of this part time work is casual (Charlesworth et al., 2002).

Research in 2005 has shown that 71 per cent of part time jobs are filled by women, and confirms that two thirds of casual work is part time work (Smith, 2005). Women suffer financially, as not only are women's full-time employment wages less than men

(Smith, 2005); but women's average weekly earnings, encompassing all of their insecure work, are only 67 per cent of men's (Smith, 2005).

Watson has examined the cost for women in working as part time casuals, and has found 'female part time casuals earn about 10 per cent less than female part time permanents.' (Watson, 2005, p.1).

An insecure workforce affects the quality of life in the wages and conditions of employees; and in the quality of family life of workers, as Pocock has shown (Pocock, 2003). Non-permanent work is a growing problem, affecting both men and women and their capacity to choose how they participate in paid and unpaid work. Buchanan asserts Australia has an increasingly fragmented workforce, consisting of employees who may be classified by their employer as casual, or fixed term contract workers; or wage earners who do not have basic employment rights such as contractors, sub-contractors and labour hire employees (Buchanan, 2005).

A fragmented workforce does not provide employee access to control over working hours, including starting and finishing times and days worked; or provide benefits such as paid sick leave and annual leave. Employees' right to quality permanent part time work, and adaptable working hours, is essential for workers with caring responsibilities, but as Buchanan has illustrated: 'Workers in 'standard' families are least likely to work standard weekly hours'. (Buchanan, 2005, Slide 6)

Gaze has also noted the insecure Australian workforce arising from less regulatory intervention: 'In a workforce founded on casual and insecure work, and pressure to work long and unpaid hours, it is almost impossible to obtain the sort of flexibility which is necessary to really reconcile work with an authentic parental role.' (Gaze, 2005, p.8)

Permanent work with adaptable hours, including access to permanent part time work, is required through greater regulation of the workforce. Noting the growth of insecure work, a legislative framework for adaptable working hours would be productively implemented in a regulatory framework which classifies employees correctly. This requires recognising permanent when performed by employees, allowing employees the ability to challenge the characterisation of their employment, and be assisted if incorrectly characterised by their employer as a casual, fixed term employee, contractor or labour hire employee.

A legislative framework which provides for adaptable working hours, including quality permanent part time work; should also allow for all 'employer designated' casuals, fixed term employees, sub-contractors and labour hire employees to apply for assessment of the characterisation of their work, and if found by an independent authority to be correctly characterised as an 'employee', should be able to access adaptable working hours through the legislative scheme. This would provide many Australian employees, incorrectly characterised as non-secure workers; with the ability to equitably participate in paid work and unpaid caring work.

The growth in insecure work disadvantages workers with caring responsibilities (Buchanan, 2005); and casual work is at the heart of this growth: 'The main path for the growth of poorly protected jobs in Australia has been the category of 'casual'

work. This is by no means the only site of the problems, but is certainly the site of some of the biggest problems.' (Buchanan, Campbell, Pocock, 2004, p.2)

Therefore, a legislative framework which provides permanent part time work to employees should enable long term casual employees to apply for permanent part time work, after six months of regular work with their employer. This legislative framework would improve women's participation in the workforce, and on structural terms which would - through permanent, regulated employment - have an immediate impact upon pay equity for women.

Recommendation – adaptable working hours for all employees

International experience has shown it is possible to provide opportunities for part time work through legislation, and nations which have introduced legislative schemes to provide part time work include New Zealand, Germany, the United Kingdom, Sweden and the Netherlands (Murray, 2004, 5-9). The best of these schemes is the Netherlands model, which has 'broken free from a focus on traditional family responsibilities' (Murray, 2005, p. 86) and instead promotes the universal value of adaptable working hours.

In this model, workers who wish to adapt their working hours by decreasing or increasing hours, or altering their distribution, place a request with their employer, and the law provides for a process which must be followed; failure to follow this process by the employer means that the employees request is deemed to be approved (Murray, 2005). The employer has to show serious business reasons as to why the request cannot be accommodated, and these are not easily substantiated in court (Burri et al., 2003).

The onus on the employer to provide a serious business reason provides a strong right to employees, and the universality of the right means that workers with caring responsibilities are not resented by those without in the struggle for fair and reasonable employment conditions, as commented on by permanent part time employees (Wells, 2005).

The features of the Netherlands model of adaptable working hours are a suitable legislative framework for providing a right to permanent part time work, introducing structural arrangements which would dramatically improve women's participation in the work force, and their pay equity.

- The adequacy of recent and current equal remuneration provisions in the state and federal workplace relations legislation
- The need for further legislative reform to address pay equity in Australia

In relation to the above two terms of reference, I support the view of the Unions NSW delegates, developed by various Unions in NSW, which recommend the following:

Preamble

A new federal legislative framework that recognises people's rights at work must work to prevent and eliminate discrimination in the workplace, and in particular,

ensure equal remuneration for men and women doing work of equal or comparable value.

Employees in Queensland, NSW and Tasmania have the right to equal remuneration for men and women employees for work of equal or comparable value. The work, classification structures and conditions under which work is performed is able to be examined by those State Commissions to ensure that Awards and Agreements are able to be adjusted to ensure that equal or comparable worth is recognised.

It is fundamental to the proper operation of the federal industrial relations regime that the new Modern Award system and agreements (collective and common law) made between parties to the employment contract, operate to give effect to the intention of the Australian Parliament, to prevent and eliminate discriminatory remuneration. Assessments of work and the conditions under which it is performed, contained in and governed by Awards and Agreements operating as a result of the federal Act, must be able to be undertaken by the Commission.

It is fundamental to the operation of any proper approach to pay equity, that an order may be made for an increase in remuneration rates contained in classification structures and pay scales, including minimum rates.

The Act

- Ensure that one of the Objects of the 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***.

  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.

- Ensure that the Commission has the power to address unequal remuneration in respect of Awards, collective agreements and common law agreements and issue Orders to vary where appropriate, and that this is contained within the relevant Divisions dealing with the respective industrial instruments that may be made and enforced under federal industrial relations law.

- Sections dealing with the relevant industrial instruments should provide that an instrument may be varied and orders may be made, for an increase in remuneration rates, including of minimum rates contained in any Award or made as a result of the National Employment Standards.

  Awards

- Ensure that the Act has a specific Section of the Act which ensures that an Award made by the Commission provides equal remuneration and other conditions of employment for men and women doing work of equal or comparable value

- Permits the Commission to consider claims concerning undervaluation of work, for men and women doing equal or comparable work, in as a wide a manner possible,

and without restricting any enquiry, take into account the findings and Principles adopted by the NSW and Queensland Commission concerning Pay Equity.

- Comparisons may be undertaken of work contained in any Award, with work in the same Award, occupation, industry or workplace, or in Awards covering different occupations, industries and workplaces from the one brought forward for consideration.

- Any regular Review of Awards mandated as a result of the ordinary operation of the Act, must include a review in respect of the Object of the Act ensuring equal remuneration and other conditions of employment, for men and women doing work of equal or comparable work.

Agreements

- In the division of the Act dealing with Agreements, the Act should provide that Agreements (collective and common law) may be varied during their life in order to give effect to the Objects of Act, and that complaints concerning Agreements (collective of common law) may be made by any party to the Agreement.

Bargaining Parties and developing Equal Remuneration Best Practice

The federal government should establish a Division of the Commission 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 in order to give effect to the Object of the Act dealing with equal remuneration

These recommendations were adopted by Unions NSW at their meeting held Thursday 3 July 2008, and I recommend them to the Committee.

Thank you for the opportunity to write to the Committee. I would be happy to talk to these issues further, or supply further information based on previous legal research.

Best regards,

Ms Jeane Wells