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

The Victorian Women’s Trust welcomes the opportunity to contribute to the House of Representatives inquiry into pay equity and associated issues related to increasing female participation in the workforce. Women’s equal and active participation in the paid workforce has been, and remains, one of a number of key concerns of the VWT across its 22 year history.

We note that the inquiry will look into issues associated with pay and report on the causes of potential disadvantages in relation to women’s participation in the workforce including, but not limited to:

- The adequacy of current data to reliably monitor employment changes that may impact on pay equity issues;
- The need for education and information among employers, employees and trade unions in relation to 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;
- 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; and
- The need for further legislative reform to address pay equity in Australia.

The VWT notes that pay equity has been on political and policy agendas since the early 1970’s and yet the gap in earnings between men and women remains intractable. In Australia in 2008 for every dollar a man earns, a woman only earns 84 cents; women loose 16 cents in every dollar earned compared with men.

Change in Gender Pay Equity Based on Full Time Earnings

May 1990 %	May 1996 %	May 2002 %	May 2008 %
82.9	82.9	84.6	83.8

ABS Cat 6302.0 Seasonally Adjusted Average Weekly Ordinary Time Earnings

The causes of this gap have been the subject of extensive analysis and research. The widespread consensus is that pay inequity is deeply rooted in systemic discrimination. This type of indirect discrimination is much more complex and difficult to address than direct discrimination. It reflects pervasive, entrenched and often unconscious values and accepted practices that allow the circumstances that result in women being paid less than men.

The VWT is concerned that pay inequality and the values and practices that entrench and perpetuate it are viewed as appropriate and inevitable by many. Efforts need to be directed at raising awareness of the factors that contribute to entrenched pay differences. These include:

1. Skill definitions and occupational segregation
2. The nature of employment contracts
3. Hours of work

1. Skill Definitions and Occupational Segregation

A partial explanation for the pay differential between women and men is the pattern of gender based segregation of occupations which mean that women are concentrated in lower paid jobs. In some instances, this reflects the limited range of work options facing women, particularly those seeking flexible work arrangements in order to balance family with work. In other cases, the concentration of women in less skilled occupations reflects gendered assumptions about the nature of skill. At its most basic, skills that underpin work predominantly undertaken by women are often portrayed as 'innate' female characteristics whereas those exercised in predominantly male work are recognised, accredited and valued as legitimate skills.

Where an occupation is predominantly filled by women, these values and assumptions can influence the way an entire occupation is valued. In highly feminised occupations, equity needs to be addressed at this occupational level rather than focussing on specific instances of difference in pay and conditions between women and men engaged in similar work¹. So for example, you would not expect to find a pay gap between male and female tellers or between male and female home care workers. Rather an investigation of discrimination needs to consider whether the entire occupation is appropriately valued.

Defining and valuing skill is a complex and contentious process. Given that women tend to be concentrated in occupations with lower formally recognised skill levels, the starting point is to define and recognise skills below trade level. After more than a decade of reform of the national vocational education and training system Australia now has an extensive system of competency standards that describe what are traditionally regarded as 'unskilled and semi skilled' work yet this has had no impact on the pay outcomes for women.

When it comes to valuing work, skill descriptors in the form of competency standards yield very different pay outcomes. Under the vocational education and training (VET) system, a Certificate III is notionally aligned to a base trade level outcome yet men and women holding the same certificate level receive very different pay outcomes. So for example, in food processing, a process worker may attain a Certificate III but is unlikely to be paid the same as a metal worker with the same certificate level. What preserves and reinforces the relativities between fe/male

¹ For example this approach has been applied in NSW in comparing the work of librarians and geologists. Also refer to IRV case study comparing home care workers and assistant gardeners: http://www.business.vic.gov.au/BUSVIC/STANDARD/1001/PC_62453.html

dominated jobs are the entrenched value judgements about skill embedded in industrial awards, wage fixation systems and the attitudes and beliefs of those who implement them.

Elements of an effective response to this level of discrimination can be summarised as follows. First, mechanisms that rely on individual complainants proving cases of discrimination will not resolve this level of discrimination. Matters of pay and conditions are tightly guarded in most workplaces. Pay equity audits conducted in Victoria found that focus group participants did not report pay equity as a concern, partly because of the secrecy and lack of transparency on pay and related conditions. Even when examples of inequity are known, women are often reluctant to initiate action on their own behalf. Finally, individual or small group actions do not effectively address the systemic nature of the discrimination. Responding to this type of discrimination requires a mechanism to support a collective response to indirect discrimination at the occupational level.

In calling for federal legislation to support collective action on pay equity, VWT notes that the existence of such mechanisms federally prior to *WorkChoices* and currently in some states has had very limited impact on pay outcomes. The cost impediments to preparing a full legal case present a significant impost to making use of these channels. Some states have provided dedicated funds to defray costs incurred by industrial organisations in preparing pay equity applications². The development of a new pay equity principle should explore ways to promote and expedite action on pay equity. For example, rather than requiring the parties to prepare a full legal case, it could allow for industrial parties to present evidence to the Commission to establish the possibility that pay inequity exists. The Commission could then refer the matter to the industrial parties to examine and report back within an agreed timeframe. The intent is to mainstream consideration of equity so that managers and employees actively engage on equity issues rather than quarantining these matters to formal legal processes.

Strengthen legal mechanisms

The VWT recommends developing new federal legislation to expedite opportunities to take collective action to redress pay inequity. Initiatives taken by some states such as Queensland and NSW to introduce equal pay principles provide a basis for drafting new federal legislation. New legislation should ensure that action can be initiated without necessarily preparing a full legal case. The Commission should be required to take account of the new Pay Equity Principle in any decisions affecting remuneration including approval of industrial agreements or award variations.

The process of award modernisation should be harnessed to satisfy the objects of a new Pay Equity Act. Specifically industrial parties should be required to examine whether any undervaluation of work has occurred in feminised occupations or industries.

Notwithstanding the establishment of new legislative and industrial provisions to address the undervaluing of skills in predominantly female occupations, women will still remain

² See for example the Queensland Pay Equity Grants Program which funds industrial organisations to prepare pay equity applications to advance pay equity in a female dominated industries or occupations.

disproportionately represented in lower paid jobs. **In addition to establishing mechanisms to redress this situation, the most effective and immediate impact on the pay gap given the high concentration of women at the lower end of the pay scale can be achieved by increasing the minimum wage.**

2. The Nature of Employment Contracts

The nature of the employment contract directly influences the size of the pay gap between women and men. The deregulation of wage setting spearheaded by *WorkChoices* significantly disadvantages women. Although award-dependent employees earn less than those who have negotiated better pay outcomes through individual or collective bargaining, the gap in pay between women and men on awards is smaller than for those on other pay arrangements. Peetz et al (2007) have looked at earnings patterns of workers on collective agreements and AWAs. This work further illustrates how the pay gap between women and men increases as bargaining on pay becomes more decentralised. Women on collective agreements fare considerably better than those on AWAs. On average, women on collective agreements earned 11% more than those on AWAs. This differential increases significantly to 19% when measured by median earnings. By comparison, the gap in earnings for men on collective agreements compared with AWAs was not as stark. Average earnings of men on collective agreements were 8% higher than their counterparts on AWAs³.

Differences between public and private sector earnings provide further evidence of the detrimental impact of deregulated wage negotiations on women's earnings. In May 2008 ordinary time earnings data shows that women in the public sector earn 12.5% less than their male counterparts. In the private sector where wage determination is more decentralised, the gap increases to 19.5% (ABS Cat 6302.0).

The message that women do less well from decentralised wage negotiations is underscored by women who participated in focus groups as part of the equal pay audits undertaken by Industrial Relations Victoria (IRV). Audits have been conducted in the National Australia Bank and in both metropolitan and regional local governments. Interestingly women and men across these projects do not identify pay equity as an issue of concern although they are deeply concerned about pay 'fairness'. While gender was not routinely identified as the basis for unfair treatment, women in local government were particularly aware that men are often better placed to negotiate on pay than women. The trend for businesses in both the public and private sector to move away from collective wage agreements in favour of one-on-one negotiations is already reflected in wider pay gaps at the upper end of the pay scale. This drive to deregulate pay and conditions most commonly affects senior roles but in sectors such as finance is being introduced for all positions.

³ Peetz, D., Preston, A. (2007) AWAs, Collective Agreements & Earnings: Beneath the Aggregate Data, Report to the Department of Innovation, Industry and Regional Development, Victoria. 2007

Redressing this form of discrimination requires action on multiple levels. At the national level, data collection needs to report on earnings under different wage setting instruments or employment contracts. A report on data adequacy known as the Women's Employment Status Key Indicator (WESKI) report⁴ sets out detailed recommendations for data required to accurately monitor pay equity.

Improve data collection

VWT endorses the WESKI recommendations for adoption.

3. Hours of work

Working hours impact on pay equity in different ways. The overwhelming impact is reflected in the nature of women's workforce participation. According to Census data, between 1986 and 2006 the labour force participation rate for women aged 15+ years in Australia increased by 10% from 48% to 58%. At the same time, the rate for men fell by around four percent to 72% for the same period. Much of the increase in women's labour force participation relates to an increase in part-time work. In 2006, 45% of employed women were working part-time, compared with 18% of employed men.

A preference for flexible work arrangements in order to balance family with work constrains employment choices. Many women end up in ghettos of highly feminised, poor quality part time and casual work. These positions are characterised by lack of any career or development pathways. The vulnerability of these workers is extensively documented and has obvious implications for pay equity⁵.

The structure and spread of working hours in full time jobs also influences the employment choices made by women. Findings of pay equity audits in Victoria indicate that women self select

⁴ A summary of the report findings and recommendations is available at http://www.nfaw.org/assets/socialpolicy/indsec_ir/weskisummary.pdf

⁵ See for example, Campbell, I and Charlesworth, S (2004) *Background Report: Key Work and Family Trends in Australia*, Melbourne, Centre for Applied Social Research, RMIT University: Melbourne.

Chalmers, J., Campbell, I. and Charlesworth, S. (2005) 'Part-Time Work and Caring Responsibilities in Australia: Towards an Assessment of Job Quality', *Labour & Industry* 15 (3)

Elton, J., J. Bailey, M. Baird, S. Charlesworth, R. Cooper, B. Ellem, T. Jefferson, F. Macdonald, D. Oliver, B. Pocock, A.C. Preston and G. Whitehouse. 2007. *Women and Workchoices: Impacts on the Low Pay Sector*. Available from <http://www.nfaw.org/social/www/2007/Women&WorkChoices.pdf>

Quality Part-Time Work – working better for everyone (2005) – a report from the Quality Part-Time Work Project, Industrial Relations Victoria

http://www.business.vic.gov.au/BUSVIC.3604710/STANDARD//PC_60956.html

out of full time jobs that require incumbents to work unsociable or extended hours. Although audits also identified anecdotal cases where women successfully negotiated different work arrangements to reduce these features of the role, most women would not consider applying in the first instance. This constrains employment opportunities for women while very clearly limiting the labour pool that businesses draw from. The impact on the pay gap is evident in the difference in the ordinary time earnings for full time workers compared with total earnings⁶. In May 08, the full time, ordinary time earnings gap between women and men was 16.1% compared with the total earnings gap of 19.5%.

Existing data does not report on the spread of hours which has a significant impact on employment decisions, particularly for women struggling to juggle the work:family balance. Adoption of the WESKI recommendations will support more robust data on the nature and scheduling of working hours. In addition to understanding more about how working hours influence employment decisions and pay outcomes, government can do more to promote models of working hours that allow people to balance the demands of work with family and other commitments.

Promote quality part time work

The VWT recommends that funding should be made available to showcase and promote quality flexible work arrangements.

4. Education and information

Notwithstanding the long history of entrenched differences in pay outcomes for women and men, gender-based pay equity is not an issue of concern for most employees.⁷ This finding highlights the need to focus on improving information and developing capability to understand and respond to equity issues. Participants in pay equity focus groups⁸ assume that there is no difference in the pay outcomes between women and men doing the same work and see pay equity as a ‘non issue’. Anecdotal examples of ‘unfair’ treatment are not typically regarded as evidence of systemic, gender-based discrimination. For the most part, focus group participants accepted gender-based occupational segregation and preparedness to work long and unsociable working hours as legitimate explanations of the pay differential. Given this experience, it is unlikely that unions or employers will come under pressure from their members and employees to address pay equity. Acting to remedy inequity will require both unions and business to take a leadership role. The context for more effective leadership should be underpinned by a robust legal framework.

⁶ Total earnings includes overtime.

⁷ This is a finding of both the pay equity audits conducted by IRV and an outcome of work and family focus groups conducted for IRV.

⁸ Refer to IRV pay equity program

Factors that have stimulated individual businesses to take the initiative on pay equity have included:

- Providing advice and methodologies.

The work of EOWA and a number of state governments in establishing and implementing pay equity audit methodologies has made a valuable contribution to supporting businesses to take action on pay equity. Selective funding of audit processes such as that provided by Industrial Relations Victoria has demonstrated the application of audit methodologies and raised awareness and capability to investigate and respond to pay inequity. These initiatives also provide a more detailed level of qualitative and quantitative data that adds to understanding the factors that shape patterns of unequal pay outcomes and more importantly, shape options to remedy them.

- Including clauses in industrial instruments.

The NAB pay equity audit was the result of a commitment in the enterprise agreement. Industrial instruments including the award modernisation process could be used to support a focus on pay equity.

- Promoting pay equity as a key indicator of good business practice.

A small number of employers including those who have participated in pay equity audits see the potential to use pay equity audits to provide a reading not only on pay outcomes but more broadly as an indicator of the overall 'health' of their business culture. Gaps between espoused policy and workplace culture provide insight into the sticking points for aligning business strategy with business practice. The themes that emerge from this work are well known:

- The pay gap in earnings between women and men varies in direct relation to the level of managerial discretion over pay and conditions;
- The structure and spread of working hours can build or remove barriers to entry for many women;
- The payroll data in many businesses is inadequate to support effective people management and specifically to monitor pay equity responsibilities;
- Managers need the tools, skills and incentives to actively manage pay equity as a core deliverable.

Promote engagement on pay equity

The VWT recommends that funding be directed to strengthen the preconditions for business and unions to take leadership on issues of pay equity. This includes:

- **Using the award modernisation process to support a commitment to address gender-based pay equity for example, by committing the parties to conduct pay equity audits.**
- **Funding unions and community organisations to conduct education campaigns to raise understanding and capacity to engage on pay equity and participate effectively in processes such as audits.**

In this submission we have canvassed some of the key features of unequal pay and made a series of recommendations designed to strengthen the mechanisms available to respond. We argue for strengthening legislative and industrial settings. We also endorse the initiatives taken by state governments to actively support workplaces to implement pay equity audit methodologies. We see advantages in strengthening the uptake of these initiatives by supporting an education program to raise awareness and understanding of the factors that contribute to unequal pay outcomes for women and in particular, the impact of indirect discrimination. Unions and community organisations such as VWT can play a role in educating and informing members and wider community on current inequities and strengthening resolve to address these. At the same time it is incumbent on business to equip managers with the data, capability and motivation to effectively manage equity in workplaces.