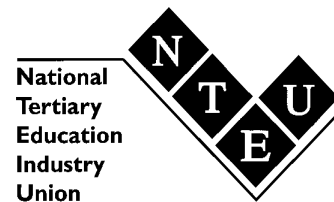


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**HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON EMPLOYMENT AND
WORKPLACE RELATIONS**

**INQUIRY INTO PAY EQUITY AND ASSOCIATED ISSUES RELATED TO
INCREASING FEMALE PARTICIPATION IN THE WORKFORCE**

SUBMISSION OF THE NATIONAL TERTIARY EDUCATION INDUSTRY UNION

By Dr Carolyn Allport, Robyn May and Sarah Roberts

1. Summary of Recommendations

- 1.1 That the Commonwealth Department of Education, Employment and Workplace Relations (DEEWR), require universities to report on university employee pay, (including salaries and bonuses) and that as part of its annual statistical analysis of university-reported data, DEEWR provide a report on aggregate university employee pay broken down by academic and general staff classifications and by gender.
- 1.2 That the Commonwealth Department of Education, Employment and Workplace Relations reinstate and properly fund an Australian Workplace Industrial Relations Survey (AWIRS).
- 1.3 That any new Federal Workplace Relations legislation seek to guarantee gender pay equity through insertion of the principle of equal remuneration for work of equal value - “a gender pay equity principle” – and require Fair Work Australia to give effect to it in all its decisions and to allow it to make appropriate orders to guarantee gender pay equity.
- 1.4 That the Australian Government set a standard of 26 weeks as the minimum entitlement for paid maternity and parental leave, structured as 26 weeks paid maternity leave for all mothers of new born babies, funded by the Government at the federal minimum wage (currently \$543.78 per week), with 12 weeks of this leave alternatively available to:
 - another parent if she or he is to be the primary carer; or
 - a parent adopting a child under the age of 5.
- 1.5 In addition to this, that the Australian Government further guarantee income at ordinary time earnings for parents in paid employment for the period of leave referred to above, through enhancing the National Employment Standards (ie an employer-funded top-up).
- 1.6 That the Australian Government ensure that employers who currently provide paid parental leave to their employees continue to fund such leave in addition to the entitlements set out above.

2. Introduction

The National Tertiary Education Union (NTEU) represents more than 25,000 staff employed in the tertiary education sector in Australia. While academic and general staff in the university sector comprise the majority of NTEU's membership, the Union also represents staff of student organisations, English Language Intensive Courses for Overseas Students (ELICOS) and staff working in university companies. In addition, the Union represents an increasing number of staff working in private education providers, TAFE and adult education.

NTEU is pleased to have the opportunity to make a submission to this Inquiry. Women's workforce participation and pay equity are important issues that deserve the attention of government. The Union has a long history of commitment to gender pay equity and is well placed to speak on these issues.

3. Pay Inequity in the Tertiary Education Industry

The issue of women's workforce participation is a critical one for Australia's Universities. University academic staff, in particular, are an ageing demographic and are the oldest group of professional workers in Australia, with up to a third set to retire over the coming decade¹. World-wide competition for high quality academic staff is fierce, and many top Australian researchers have been lured overseas by high salaries and first class research facilities. In this context the recruitment, retention and promotion of women academics has a renewed importance.

However, evidence is emerging that whilst the academic labour market is becoming tighter, gender pay equity is becoming less rather than more attainable in the University sector². Whilst women now attend University in higher rates than men, and the proportion of women in non-casualised academic positions has grown considerably (to 41% in 2006), growth in access to senior academic posts has been slow. In 2007 just 24% of professorial positions were occupied by women³.

There are a number of factors working against women gaining access to senior positions, and gender pay equity. These factors include the excessive hours culture and work intensification, lack of mentors, role models and support, merit and success defined in gendered terms and career interruptions associated with childbirth and care⁴. In addition, structural changes in the academic labour force are having a negative impact on the gender pay gap and women's access to tenured employment.

Despite rising significantly over the past 50 years Australia's female labour force participation rate is not high by international standards. A 2004 OECD study examining participation rates of women aged 25-54 found that Australia ranked 19 out of the 30 member nations⁵. There has been a rise in women's participation rates in Australia however, and with this there has been a rise in the number of women with qualifications, such that the proportion of women with qualifications is only slightly lower than that of men, and a higher proportion of women have higher qualifications⁶. Much of the increase in women's participation though has been in

part time employment⁷, raising a new set of questions about the quality of these jobs, the impact this has on analysis of the gender pay gap and on labour market segmentation. As a consequence the question of the capacity of women to combine work and family, public policy initiatives around work and family are critical to women's workforce participation rates.

The higher education sector has been at the forefront of workplace initiatives designed to assist women, in particular, to combine work and family. Following an initiative negotiated by the Australian Catholic University with the NTEU and the CPSU in 2003, NTEU has led the way achieving an average of 26 weeks paid maternity leave at Australian universities, and up 36 weeks at some institutions. This was a key part of the Union's successful national bargaining with universities from 2003. Bargaining outcomes also included access to further unpaid leave, up to a total of 2 years. Other conditions such as access to carer's leave are also now standard across Universities. The other important initiative is access to workplace based child-care facilities. A number of universities offer in-house crèche facilities and allow staff to salary-sacrifice the fees, providing a critical cost saving, and facilitating return to work for staff with young children. This is not standard across all universities however, and, where crèche facilities do exist there are often long waiting lists and high charges.

With the internationalisation of Australia's universities has come significant change to the structure of the academic labour market, as universities have sought to operate more like a business⁸. Academic staff are now more likely than ever to face insecure employment, with record numbers currently employed on either a casual or fixed term basis⁹. In the decade to 2005, casual staff numbers in the sector increased 54% whilst overall employment grew 17%¹⁰. Fixed term employment has likewise surged following the introduction of the Higher Education Workplace Relations Requirements, which linked funding to the removal of restrictions upon its use.

These changes have hit women hardest. Analysis of the 2007 DEEWR¹¹ data shows that 25% of all female academic staff on a full time equivalent basis are casual (compared with 16% of men), mirroring economy wide trends of up to a third of all women workers employed casually¹². Suggestions that casual work for female academic staff somehow reflects their preference for 'flexibility' in combining work and family, have been debunked by research¹³. Instead many casual academic staff find themselves trapped in a cycle of insecurity with faint hope of a permanent position¹⁴. At the same time, little has been done to address the growing skills crisis in the sector and there is no mechanism for a sector wide approach to the issue as universities compete against each other for quality staff.

4. Inquiry Terms of Reference

Specific comments relevantly relating to the Inquiry's Terms of Reference are set out below.

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

The most recent calculation of the gender pay gap in higher education was ten years ago in the NTEU-sponsored, *Gender Pay Equity in Australian Higher*

*Education*¹⁵. On the basis of payroll data provided by survey participants, that study discovered that male academic staff were paid an average of 26.5% more than female academic staff per fortnight. General staff males were paid an average of 23.4% more than female general staff per fortnight.

However, this data is now out of date: no new sector-wide data has been collected since 1998. There is no reliable government data on gender pay equity in higher education: DEEWR does not collect data on the gender pay gap within Australian universities, nor does it require universities to provide the level of data that would make this analysis possible.

In particular, the classification profiles of universities, as published by the Department of Education, Employment and Workplace Relations in its Staff Statistics series, were until the turn of the century able to be used by researchers and others as a reasonable proxy for rates of pay, as the actual rate of pay for the large majority of staff could be derived from knowing the classification level. The considerable increase in management-discretionary payments, above the rates of pay specified in collective agreements, (for both academic and general staff) now mean that the classification profiles can no longer be used in this way. The effect of these payments - which in their own right are likely to have had a negative impact on gender pay equity in universities - is that there is actually much *less* useful data than there was a decade ago.

NTEU submits that the failure to collect the data which would allow an analysis of the gender pay gap in the higher education sector is a serious omission and that an absolutely necessary first step in ameliorating the causes of gender pay inequity must be first to calculate, and then understand the reasons for the gender pay gap.

Furthermore, for use on an economy wide basis, as well as in the higher education sector, reinstating the Australian Workplace Industrial Relations Survey (AWIRS), which last reported in 1995 (and was de-funded by the Howard Government) would provide a rich source of data for researchers, enabling a thorough inquiry into the issues raised above.

Recommendations:

That the Commonwealth Department of Education, Employment and Workplace Relations (DEEWR), require universities to report on university employee pay, (including salaries and bonuses) and that as part of its annual statistical analysis of university-reported data, DEEWR provide a report on aggregate university employee pay broken down by academic and general staff classifications and by gender.

That the Commonwealth Department of Education, Employment and Workplace Relations reinstate and properly fund an Australian Workplace Industrial Relations Survey (AWIRS).

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

Decentralised pay determination in higher education works against gender pay equity. As British academic Jill Rubery¹⁶ notes, '*systems to establish minimum labour standards and to integrate and centralise pay determination may be more important in promoting and maintaining women's pay than explicit pay equity policies*'. Not only have universities been bargaining on an institution by institution basis for wages and conditions since 1993, opening up a pay gap between regional universities and their city based counterparts, performance pay and other discretionary payments are increasingly becoming a feature in some segments of the academic labour force.

The literature is very clear about the impact of individualized and discretionary pay arrangements on gender pay equity. A study of performance related pay systems and equity in the New Zealand public service found that women were indirectly disadvantaged by schemes which rewarded higher earners (more likely to be men) with greater increases, thus causing a widening of the pay gap¹⁷.

Without some regulation of over-Agreement bonus payments, we cannot expect the gender pay gap to close. Such regulation can be direct (by the Commonwealth) or, more probably indirect through effective and pro-active assessment combined with an effective system of tribunals or like bodies.

If we are to bridge the gender pay gap in the current industrial environment the following measures are critical:

- Strong and enforceable minimum standards for pay and conditions.
- Enforceable arrangements to assist with work-life balance such as 48/52 leave, right to part time work, carer's leave.
- Requirements for transparency in regard to performance and other individualised pay arrangements.
- Paid parental leave.
- The availability of high quality, affordable child-care, where possible based at the workplace.

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

Prior to the advent of *WorkChoices* in 2006, there were a number of mechanisms available to implement pay equity in the Australian economy, including:

- Award reviews based on equal pay for work of equal value principles in State jurisdictions (eg in NSW and Queensland).
- Test Cases and Work Value Cases in the Australian Industrial Relations Commission (AIRC).
- National Wage Cases.
- Orders based on the equal remuneration provisions in the Workplace Relations Act.

WorkChoices largely removed access to the State jurisdictions' equal remuneration mechanisms through its use of the Constitutional corporations power to assume federal control over workplace relations. The role of the AIRC in ensuring equal pay was similarly restricted: wage rates and classifications were no longer allowable award matters, meaning the AIRC no longer had any capacity to conduct test cases on equal pay. The AIRC's wage-setting power was also removed, and with it the capacity to run National Wage Cases and work value cases.

While *WorkChoices* endowed the new Australian Fair Pay Commission (AFPC) with the power to fix Federal minimum wages, no overriding pay equity principle guided the process: rather, the AFPC itself determined the issues to be taken into account.

The capacity to seek orders in the AIRC based on the principle of equal remuneration for work of equal value was largely retained under *WorkChoices*, but these provisions were the weakest of all the equal pay mechanisms due to their complexity and onerous burden of proof. Furthermore, the AIRC's role in making such orders was effectively restricted under *WorkChoices* to classifications of workers that had not had pay scales set by the AFPC. Thus the system was designed to be a failure.

While the Rudd Government's initial workplace relations legislation has removed some of the more damaging aspects of *WorkChoices* as far as higher education employees are concerned, gender pay equity principles and mechanisms have not yet been reinstated. Labor's *Forward with Fairness* policy indicates that the new workplace relations legislation will give effect to equal remuneration for work of equal value, but how this is to be achieved is as yet unclear.

At the very least, reinstatement of the equal remuneration legislative provisions that existed prior to *WorkChoices*, and ongoing evaluation of the effectiveness of these provisions is needed to close the gender pay gap.

Better still, the complex and difficult provisions which existed pre-*WorkChoices* should be replaced by inserting and defining a "principle of gender pay equity", and giving the AIRC or Fair Work Australia a general power and responsibility to:

"enquire into, and to deal with disputes about pay equity as between men and women, including systems and practices which cannot be justified and which lead to inequity based on gender; whether in a single business, part of a single business, or in an industry or occupation or group of occupations, and to make orders, either on its own motion or on the application of an organisation of employees; either binding named parties or of common-rule application, which it considers necessary to further the principle of gender pay equity."

Recommendation:

That any new Federal Workplace Relations legislation seek to guarantee gender pay equity through insertion of the principle of equal remuneration for work of equal value - "a gender pay equity principle" – and require Fair

Work Australia to give effect to it in all its decisions and to allow it to make appropriate orders to guarantee gender pay equity.

4.4 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 Australia's higher education institutions, women's access to promotion and senior positions is still unequal. DEEWR's 2007¹⁸ staff statistics show that women comprise only 24% of academic staff at senior Levels D and E (Associate Professor and Professor). While at Level C (Senior Lecturer) the ratio is slightly better, women still remain significantly under-represented (at 37%) when compared with their male colleagues. These rates remain well below what might be expected given women's share of the academic workforce, suggesting that there is still a measure of disadvantage experienced by women in progressing academic careers. Similarly, women are also clustered at the lower levels of the general staff classification structure.

This is not because women are not committed to their careers: women in higher education are just as career-oriented and ambitious as men¹⁹. However, women are more likely to be working part-time than men, and to have breaks in employment, with negative influences on their chances for promotion. It is well established that interruptions in employment such as those for childbirth and child raising reduce women's attachment to the labour force and can be barriers to women's career progression²⁰. Clearly, these barriers have been working effectively to restrict women's access to senior university positions. Furthermore, explanations for women's disadvantage are multi-factoral,²¹ definitions of success and merit have largely been defined by men in academe,²² and women adjust their preferences in response to the barriers they face²³.

One of the ways in which women's labour force attachment and ultimate promotion prospects can be enhanced is by improving paid maternity leave and return to work arrangements. Decent paid maternity leave and return to work arrangements can smooth women's path back to work after childbirth, and assist with lowering barriers to women's career progression. Internationally, in countries where decent paid parental leave is provided, employment activity rates post-birth are higher than in countries where paid parental leave is lower or minimal.²⁴ In the United Kingdom, the more generous the period and paid component of maternity leave, the more likely the woman is to return to work after leave.²⁵

As a result of NTEU's collective bargaining efforts, since 2006 all Australian higher education institutions provide a minimum standard of 26 weeks paid maternity leave, as already noted. Return to work arrangements vary, but generally provide for a right to return to work part time. While it is far too early to evaluate the impact these new provisions have had on women's career progression in higher education, we anticipate that over time they will contribute to a narrowing of the gender pay equity gap. It would be valuable however, to have research conducted into the impact of such paid maternity leave schemes on the gender pay gap.

Although the parental leave arrangements in higher education are at a decent level, the fact is most Australian women do not benefit from such entitlements. In

this context, NTEU welcomes the Productivity Commission Inquiry into Paid Maternity, Paternity and Parental Leave 2008 and in particular the proposal for a government-funded paid maternity leave scheme. A government-funded paid maternity leave scheme could help close the gender pay gap by improving women's attachment to the workplace and thereby assisting career progression. Such a scheme would also contribute to boosting the participation rates of women in the workforce.

NTEU has made a specific recommendation to the Productivity Commission on the structure of a government-funded maternity leave scheme, which is fully elaborated in that submission and set out below. NTEU's recommended standard for paid maternity leave of 26 weeks is based on existing entitlements in the higher education industry as well as the level set by the International Labor Organisation (ILO) and the World Health Organisation (WHO), and includes 14 weeks paid maternity leave for working mothers (the ILO standard) and an additional 12 weeks to assist in the physical recovery of birth and allow for breastfeeding to be established during the vital first months (WHO standard).

Recommendations:

That the Australian Government set a standard of 26 weeks as the minimum entitlement for paid maternity and parental leave, structured as 26 weeks paid maternity leave for all mothers of new born babies, funded by the Government at the federal minimum wage (currently \$543.78 per week), with 12 weeks of this leave alternatively available to:

- another parent if she or he is to be the primary carer; or
- a parent adopting a child under the age of 5.

In addition to this, that the Australian Government further guarantee income at ordinary time earnings for parents in paid employment, for the period of leave referred to above, through enhancing the National Employment Standards (ie an employer-funded top-up).

That the Australian Government ensure that employers who currently provide paid parental leave to their employees continue to fund such leave in addition to the entitlements set out above.

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