

## Pay Equity Unit

- 7.1 A number of submissions to the inquiry support the establishment of a separate office to take a holistic approach to the policy and legislative frameworks needed to achieve pay equity. This could be achieved through the introduction of a stand-alone pay equity act or through amendments to the existing *Fair Work Act 2009*. Whether the amendments are to the *Fair Work Act* or a separate piece of legislation, the legislative requirements should include:
- positive obligations on private and public sector employers to recognise and give effect to the right to equal remuneration;
  - the conduct of public and private sector pay equity audits;
  - development of pay equity plans;
  - annual reporting requirements for public sector agencies; and
  - reporting by public and private sector employers.
- 7.2 The rationale behind enacting separate pay equity legislation is that experience shows that womens' right to equal remuneration has not been realised through the mainstream industrial relations system, which is steeped in gender assumptions and the historical under-valuation of work.
- 7.3 A comprehensive approach, and one adopted by most European states, recognises equal remuneration measures need to be supported by separate legislation. A stand-alone Act sends a clear political signal of the priority given to pay equity by government and clearly specifies measures intended to help drive deeper systemic change. Stand-alone legislation has an educative value in being identified as a high profile public issue.<sup>1</sup>

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<sup>1</sup> Dr Cassandra Goldie, Director, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, p. 17.

Women into Politics saw pay equity legislation as a 'necessary preliminary' to education as attitudinal change will follow legislative change.<sup>2</sup>

- 7.4 A Pay Equity Act is a vehicle for supplementing mainstream industrial relations system, focusing the attention of employers, and, generating knowledge, expertise and strategies for eliminating systemic inequity in the workplace. The Australian Human Rights Commission added that separate legislation would also clarify the roles and responsibilities and address existing lack of co-ordination across the whole of government.<sup>3</sup>
- 7.5 A Pay Equity Act needs to express clear simple positive obligations on employers to respect and implement womens' right to equal remuneration; explain what pay equity means and provide the tool to conduct pay equity audits. It needs to provide a framework for developing a pay equity plan and clear reporting obligations. The purpose of reporting should be articulated so that investment in analysis and reporting is part of a constructive dialogue.
- 7.6 Employers equal opportunity for women in the workplace programs should be designed to ensure that:
- appropriate action is taken to eliminate all forms of discrimination by the relevant employer against women in relation to employment matters; and
  - measures are taken by the relevant employer to contribute to the achievement of equal opportunity for women in relation to employment matters.

In addition to the obligations on corporations, requirements imposed under the act should also apply to unions and non-government organisations, such as charitable bodies. Many not for profit organisations carry out public functions financed through government grants and should be included so as to ensure transparent open and public feedback to federal policy and law makers on the achievement of pay equity for traditionally low paid and female dominated occupations.

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2 Ms Joan Bielski, Women into Politics, *Transcript of Evidence*, 1 April 2009, pp. 21, 24.

3 Dr Cassandra Goldie, Director, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, pp. 17-18.

## Specialist Pay Equity Unit

7.7 A Pay Equity Act should establish a specialist Pay Equity Unit within Fair Work Australia. Fair Work Australia was described as a ‘one-stop-shop’ for practical information, advice and assistance, to settle grievances and ensure compliance with the workplace laws.<sup>4</sup>

Where you put it – which organisation it is linked to – is incredibly important. If it is sent off in Sydney and it is a small unit and it is linked to FaHCSIA, it does not have the standing that it would do if it were placed in one of the central agencies sitting in Canberra. That is purely and utterly about how things are perceived.<sup>5</sup>

7.8 The Australian Education Union saw the role of a separate division within Fair Work Australia as:

... to gather data, publicise best practice, and issue regular updates on the achievement of equal remuneration for employees covered by the federal system of awards and agreements. The Division would be able to be called upon by the Commission in order to assist in any review undertaken so as to give effect to the Object of the Act dealing with equal remuneration.<sup>6</sup>

7.9 The principal objects of the legislation should establish a unit to:

- promote the principle that employment for women should be dealt with on the basis of merit;
- promote, amongst employers, the elimination of discrimination against, and the provision of equal opportunity for, women in relation to employment matters; and
- foster workplace consultation between employers and employees on issues concerning equal opportunity for women in relation to relevant employment matters.

7.10 The role and functions of the unit would include but not limited to:

- communicating information to the public about the pay equity act to promote understanding and acceptance, and public discussion, of equal opportunity for women in the workplace;

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4 Department of Education, Employment and Workplace Relations, *Submission No. 58*, p. 15.

5 Ms Jenness Gardner, Manager, Pay Equity Unit, Department of Commerce, Western Australian Government, *Transcript of Evidence*, 26 February 2009, p. 12.

6 Australian Education Union, *Submission No. 76*, p. 16.

- developing tools for the assistance of employers and pay equity committees in developing pay equity plans or otherwise achieving pay equity;
- assisting in the training of employer's pay equity committees;
- providing reports and advice to government about the progress of this legislative policy;
- providing advice and assistance to employers in the development and implementation of workplace programs;
- issuing guidelines to assist relevant employers to achieve the purposes of this Act;
- monitoring the lodging of reports by relevant employers as required by this Act and to review those reports and deal with them in accordance with this Act;
- monitoring and evaluating the effectiveness of workplace programs in achieving the purposes of this Act;
- undertaking research and studies on relevant issues, educational programs and other programs for the purpose of promoting equal opportunity for women in the workplace;<sup>7</sup>
- conducting impartial investigations of disputes and complaints;
- reviewing the effectiveness of this Act in achieving its purposes; and
- reporting to the Minister on such matters in relation to equal opportunity for women in the workplace as the Agency thinks fit.

7.11 The new unit would include the functions of the current Equal Opportunity for Women Agency, however, there would be a number of significant differences. The Pay Equity Unit would comprise three major functions in enforcement research and education.

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<sup>7</sup> See discussion on Quebec and the Pay Equity Commission in DEEWR, *Submission No. 58*, p. 31.

**Fair Work Australia**



**Deputy President**



**Pay Equity Unit**



<b>Enforcement</b>	<b>Research</b>	<b>Education and Promotion</b>
<p>Biennial reporting (plans, audits, actions)</p> <p>Investigate disputes/complaints</p> <p>Job evaluation of specific occupations that are low paid</p> <p>Monitor changes in awards</p> <p>Self referral powers</p> <p>Review effectiveness of the Act</p> <p>Report to Minister/Parliament; and</p> <p>Report on matter relevant to Australia’s international obligations</p>	<p>Develop tools/programs to assist employers</p> <p>Preparation of guidelines to assist employers</p> <p>Monitor and evaluate the effectiveness of workplace programs</p> <p>Reports on wages and conditions and changes in pay equity outcomes</p> <p>Provide information and assistance to employers through the maintenance of a website and</p> <p>Collection of data</p> <p>Facilitate greater comparability of alternative data sources.</p>	<p>Provide information to the public on the legislation</p> <p>Assist in training, job evaluation processes; the development of workplace plans and programs;</p> <p>Assist in undertaking audits;</p> <p>Administering reporting obligations.</p> <p>Promotion of the pay equity principles and undertake initiatives such as the Employer of Choice for Women Awards.</p>

- 7.12 In addition to any other powers conferred on the Unit, the Unit should have the power to do all things necessary or convenient to be done for or in connection with the performance of the functions of the Unit.

### **Recommendation 22**

**That the Minister introduce an Act to establish a specialist pay equity unit within Fair Work Australia as central point for pay equity monitoring, development and application of pay equity audits, development of pay equity plans; and the provision of specialist assistance to Fair Work Australia in award modernisation**

- 7.13 For the purposes of the pay equity act, the definition of 'employment for women' in the Pay Equity Act should include:
- the recruitment procedure, and selection criteria, for appointment or engagement of persons as employees;
  - the promotion, transfer and termination of employment of employees;
  - training and development for employees;
  - work organisation;
  - conditions of service of employees;
  - arrangements for dealing with sex-based harassment of women in the workplace; and
  - arrangements for dealing with pregnant, or potentially pregnant employees and employees who are breastfeeding their children.

### **Deputy President**

- 7.14 There should be a designated Pay Equity Deputy Commissioner to oversight the functions of the Pay Equity Unit and facilitate the cooperation and coordination of the work of the unit with the other roles and function of Fair Work Australia. There needs to be an interface between the Pay Equity Unit and those members of Fair Work Australia who are modernising awards and approving agreements. This would give the Unit status within the organisation and demonstrate the Government's commitment to the principles of pay equity.

**Recommendation 23**

**That a Deputy President be assigned responsibility for the administration, conduct and strategic output in relation to the activities of the Pay Equity Unit.**

**Advisory Board**

7.15 An advisory board should be established to advise the Deputy President and to enable input from stakeholders. In the Scottish jurisdiction Close the Gap is an independent body funded by the Scottish Government through ministerial approval and may be an appropriate model. The steering group includes representatives from the Scottish Government, Equality and Human Rights Commission, Scottish Trades Union Congress, Highlands and Islands Enterprise and Scottish Enterprise which are the two economic development agencies that cover the whole of Scotland.<sup>8</sup>

7.16 Close the Gap stated:

The benefit to us in having such a broad partnership is that businesses recognise that we come from a position of being interested in productivity as well as being interested in equality and so I think it gives us some credibility with, for example, private sector organisations where we may not have had that had we only been focused on equality work per se.<sup>9</sup>

**Recommendation 24**

**That the Deputy President appoint an Advisory Board comprising relevant government agencies, union, employer and employee representatives to provide input into strategic policy development.**

**Enforcement function**

7.17 The combination of 'sticks' and 'carrots' would be the most effective approach. Fair Work Australia would have the capacity to apply the penalty regime as deemed appropriate. Union peak bodies stated that

8 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 2.

9 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 2.

‘enforced regulation is necessary to encourage, educate and assist organisations to address pay inequity and to ensure pay inequity is addressed where it is most likely to occur.’<sup>10</sup>

7.18 The Australian Education Union suggested:

... audits are useful as a diagnostic tool and to assist organisations understand dimensions and application of gender pay equity, however the compulsion to act, via principles or separate legislation allows for advances in a more systemic fashion.<sup>11</sup>

7.19 Union peak bodies called for an inspectorate and compliance group empowered to investigate incidence and conduct audits.<sup>12</sup> The QIRC concluded that ‘voluntary approaches to pay equity are limited in their delivery of outcomes’.<sup>13</sup> The Queensland Industrial Relations Commissioner argued that:

... a voluntary approach is slower than a legislative based approach in delivering real pay equity gains for women. Research has shown that in the absence of compulsory practices organisations are left to make their own judgements about what is equitable for employees and profitable for business. Further, organisations are only certain about what to do when policies are spelt out in legislation.<sup>14</sup>

7.20 In arguing for mandatory pay equity audits the ACTU took the view that to ensure cultural and workplace change follows the legislative changes, you need to measure pay equity at both the firm and national levels.<sup>15</sup> Union peak bodies suggested:

mandatory annual reporting by all employers on basic gender pay data which is not overly onerous on employers but which is sufficient for meaningful analysis ... the second tier proposes a mechanism where in depth investigating and auditing can be

10 Australian Council of Trade Unions (ACTU) and Joint State Union Peak Councils, *Submission No. 125*, p. 38.

11 Australian Education Union, *Submission No. 76*, p. 19.

12 Australian Council of Trade Unions (ACTU) and Joint State Union Peak Councils, *Submission No. 125*, p. 38.

13 Queensland Industrial Relations Commission, 2007, *Pay Equity TIME TO ACT*, Inquiry to examine the impact of the federal Government’s WorkChoices amendments to the *Workplace Relations Act 1996* on pay equity in Queensland, p. 7.

14 Commissioner Glenys Fisher, Queensland Industrial Relations Commission, *Transcript of Evidence*, 31 March 2009, p. 4.

15 Ms Catherine Bowtell, Senior Industrial Officer, Australian Council of Trade Unions, *Transcript of Evidence*, 3 April 2009, p. 2.



instigated and enforced if mandatory reporting identifies pay inequity. Such investigations should be capable of being instigated not just by specialist pay equity agencies but women and their unions.<sup>16</sup>

7.21 The ACTU added that compulsory measurement is a remedy in itself as:

... measuring is one of the very important things ... you will not get cultural change unless there is a recognition of a problem in firms.<sup>17</sup>

7.22 In the New Zealand experience:

The review process in itself was a significant education and awareness-raising exercise for employers, unions, human resources practitioners and others. Hundreds of people have now been directly involved in review committees, and many thousands have been involved in reviews in various ways.<sup>18</sup>

7.23 The ACTU made the point that the basic reporting information would be similar to that required for the tax office and the level of information required would depend on the size of the business.<sup>19</sup>

7.24 The current 'stick' wielded by EOWA is to be named in Parliament as not complying with the legislation.<sup>20</sup> However, some firms saw this as a 'badge of honour' to be noncompliant with the current legislation.<sup>21</sup> The use of corporate social responsibility in the naming and shaming approach would not be as effective as providing sanctions against firms that did not participate in required processes.<sup>22</sup>

7.25 The Finance Sector Union of Australia found that women could not overcome barriers resulting from assumptions of work value, work organisation, hours of work and performance that were built into jobs:

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16 Australian Council of Trade Unions (ACTU) and Joint State Union Peak Councils, *Submission No. 125*, p. 28.

17 Ms Catherine Bowtell, Senior Industrial Officer, Australian Council of Trade Unions, *Transcript of Evidence*, 3 April 2009, p. 3.

18 Ms Philippa Hall, Director, Pay and Employment Equity Unit, Department of Labour, New Zealand, *Transcript of Evidence*, 13 August 2009, p. 2.

19 Ms Belinda Tkalcevic, Legal Industrial Officer, Australian Council of Trade Unions, *Transcript of Evidence*, 3 April 2009, pp. 14 -15.

20 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 19.

21 Ms Mairi Steele, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 20 August 2009, p. 9.

22 Mr Rodney Masson, National Director, Finance Sector Union of Australia, *Transcript of Evidence*, 3 April 2009, p. 34.

no amount of cooperation such as that shown between NAB [National Australia Bank] and FSU at the time of the pay equity audit can overcome these issues in the long term. A plethora of regulation, monitoring and enforcement initiatives is required.<sup>23</sup>

7.26 Hamilton James and Bruce suggested that:

... specific legislative reforms should also consider motivating and empowering structures to effectively address and monitor pay equity. In doing so, state and federal governments should make all businesses accountable for upholding the principles of equal pay stipulated in legislation through mandatory reporting, auditing and sanctions for non compliance.<sup>24</sup>

7.27 Several submissions opposed mandatory reporting and consideration was given to whether there should be a voluntary approach or whether the implementation of strategies should be mandatory. Ritchies Stores Pty Limited opposed the introduction of mandatory reporting 'that have the effect of increasing administrative and compliance burdens' describing it as a 'cumbersome idea and the benefits are not clear'.<sup>25</sup>

7.28 The University of Western Sydney found the audit process to be a labour intensive and time consuming process and added that:

Higher education institutions are already burdened by onerous reporting requirements and there is little evidence that mandatory reporting requirements alone have directly resulted in significant outcomes for equity target groups including women. As an example, within the NSW government sector, mandatory reporting of the representation of equity groups and the production of action plans has been required for over a decade but there is no evidence that this has increased the representation of those groups within the NSW government and quasi-government sectors.<sup>26</sup>

7.29 Diversity Council Australia Ltd did not favour mandatory reporting requirements given the significant movement quite recently:

... reporting would be a burden that would take away from the task ... Clearly human resources managers have nearly as little understanding as the broader community of what pay equity

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23 Ms Susan Kenna, National Industrial Officer, Finance Sector Union of Australia, *Transcript of Evidence*, 3 April 2009, p. 28.

24 Hamilton James and Bruce, *Submission No. 77*, p. 1.

25 Ritchies Stores Pty Ltd, *Submission No. 78*, p. 3.

26 University of Western Sydney, *Submission No. 86*, p. 2.

actually is ... A quick fix solution it ain't. We think the educative provisions need to be introduced in the community and, very specifically, in business ... so that one day we may move towards reporting. But history has proven that it is not a great way to get things done in the first instance. My interest and DCA's interest, from tracking this issue over a very long time, is real outcomes.<sup>27</sup>

- 7.30 The Council suggested a 'non-mandatory approach to progressing pay equity, emphasising greater education and information and better data analysis and monitoring'<sup>28</sup>.
- 7.31 There was also concern that private sector employers could comply notionally with out implementing any changes.<sup>29</sup>
- 7.32 On the other hand, the Pay Equity Unit in Western Australia considered that there had been progress through encouragement and that while the voluntary approach could be considered the 'slow-burn solution', it was long term changes that were sought to a problem that has existed for a long time.<sup>30</sup> The WA review found that:

... having recognized the need for a combination, we would not want to understate the importance of voluntary strategies. In the field of IR, statutory processes have their limitation, and it is in the workplace where the gender pay gap will eventually be resolved. The resolution of issues impacting on the gender pay gap is dependent upon the commitment of the main industrial parties in the workplace.<sup>31</sup>

## Monitoring pay equity

- 7.33 Under the proposed Pay Equity Act relevant employers would be required to report on the establishment and implementation of pay equity action plans including the outcomes of pay equity audits. The Act would require legally binding documentation of pay equity adjustments, the

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27 Ms Nareen Young, Executive Director, Diversity Council Australia Ltd, *Transcript of Evidence*, 26 September 2008, p. 42.

28 Diversity Council Australia, *Submission No. 110*, p. 18.

29 Dr Anne Junor, *Transcript of Evidence*, 26 September 2008, p. 60.

30 Ms Jenness Gardner, Manager, Pay Equity Unit, Department of Commerce, Western Australian Government, *Transcript of Evidence*, 26 February 2009, p. 12.

31 Dr Trish Todd and Dr Joan Eveline, 2004, *Report on the review of the Gender Pay Gap in Western Australia*, p. 53 cited in Chamber of Commerce and Industry of Western Australia, *Submission No. 72*, p. 14.

implementation of adjustments to rectify pay inequity, mandatory reporting, dispute resolution and sanctions for non-compliance.<sup>32</sup>

- 7.34 There are a number of readily available pay equity tools that employers can currently access.<sup>33</sup> EOWA has an online Pay Equity Tool which has been used by employers with 100 or more employees and the Western Australian Pay Equity Unit has also released a pay equity tool which can be used by smaller companies or organisations and public sector agencies. The tool is designed to make doing an audit easy:

... it is pretty simple; we have used it in a number of different organisations – to drag it, drop it and press a button and it will produce graphs, data and basically the outline of a report. We think it is very, very simple, but it is actually the major focus of what my team does. We spend a lot of time talking to people about how to use the tool, how to put your data into the right format to input it and then what those graphs mean, what sort of information that is providing you and also assisting organisations to think about what recommendations would be appropriate for them.<sup>34</sup>

- 7.35 Dr Meg Smith, however, described the pay equity tool as ‘an alerting tool that does not necessarily address the issues of valuation that contribute to pay equity’ adding that it is a with-in organisation tool which presumes the capacity to implement that tool.<sup>35</sup> The compliance guidelines for EOWA reporting do not make reporting on pay data a requirement.<sup>36</sup>
- 7.36 The current *Equal Opportunity for Women in the Workplace Act 1999* relates to ‘private companies and other organisations (including community organisations, non-government schools, unions, group training companies and higher education institutions) with 100 or more employees.’<sup>37</sup> However, many organisations with a predominantly female workforce fall beneath this threshold.

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32 See discussion in Queensland Industrial Relations Commission, 2007, *Pay Equity TIME TO ACT*, Inquiry to examine the impact of the federal Government’s WorkChoices amendments to the *Workplace Relations Act 1996* on pay equity in Queensland, p. 8.

33 For example see Ms Suzanne Hammond, Industrial Relations Spokesperson, *Transcript of Evidence*, 14 May 2009, p. 11.

34 Ms Jenness Gardner, Manager, Pay Equity Unit, Department of Commerce, Western Australian Government, *Transcript of Evidence*, 26 February 2009, p. 5.

35 Ms Meg Smith, *Transcript of Evidence*, 26 September 2008, p. 54.

36 Equal Opportunity for Women in the Workplace Agency, *Submission No. 113*, p. 12.

37 See discussion in DEEWR, *Submission No. 58*, p. 17.

- 7.37 It is important that in monitoring pay equity, small businesses are involved because of the number of women employed in this sector. The practice in the past has been to make the resources of EOWA available to all businesses and to use mechanisms such a media and chambers of commerce to raise awareness amongst small business owners.<sup>38</sup>
- 7.38 Business and Professional Women Australia commented that ‘very small businesses are normally stretched to capacity’ and tend to be fairer anyway. It is the processes that develop over time that become discriminatory as the business grow to 40 or 50 staff.<sup>39</sup>
- 7.39 There are a number of issues to be considered in requiring employers to incorporate pay equity initiatives including:
- Resources to report, compare and analyse organisational pay equity data;
  - Privacy to pay data inhibiting employees from understanding their own pay equity;
  - Privacy of comparative data in similar industries/businesses
  - Those dealing with pay equity may not be reporting to the CEO/board;
  - In male dominated industries, pay equity may not be deemed a priority given the small number of females; and
  - The need and mechanisms for legislative reinforcement.<sup>40</sup>
- 7.40 In relation to the provision of information to small businesses who may be loosing staff because they are not competitive in the labour market, EOWA commented that:
- We provide information already. We have produced a number of what we call industry verticals, which provide benchmarking information for businesses within specific industries. We have done manufacturing – being the largest sector – education, finance, ... and we are about to do retail. That provides a workplace profile of the sector, of what business issues are facing the sector and how larger organisations are addressing these business issues through EO initiatives. That information is available to small business and they can benchmark themselves in the sector. The issues of pay equity probably are significant, certainly for the employees in small businesses, where they might not necessarily have the

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38 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 25.

39 Mrs Sandra Cook, Director of Policy, Business and Professional Women Australia, *Transcript of Evidence*, 5 November 2008, p. 2.

40 Hydro Aluminium Kurri Kurri Pty Ltd, *Submission No. 36*, p. 1.

sophisticated HR systems of benchmarking and performance review practices and it is more on values, culture and behaviour and rewarding not necessarily on job value but rather just that they are a good person.<sup>41</sup>

7.41 EOWA cautioned that:

It is our experience of those smaller organisations of around 100-plus employees that they do not necessarily have the HR systems in place to collect the data or the resources available to necessarily commit to specific HR programs. Collecting, providing and reporting on some of this information would be, for smaller employers, a significant burden. But, that said, that does not mean it does not happen and that employers are not putting in place measures which remove discrimination and increase women's workforce participation ... So, whilst they are not necessarily being monitored, that does not mean that activity and action is not actually taking place.<sup>42</sup>

7.42 The point was made that small businesses have to comply with Occupational Health and Safety and taxation rules and the Kingsford Legal Centre did not make a 'distinction in terms of the capacity of a business to abide by anti-discrimination laws that have been in place for a long time'.<sup>43</sup> It is envisioned that prosecution in these cases would be restricted to repeat offenders and recalcitrant employers.<sup>44</sup>

7.43 An effective system could be developed that does not place an onerous burden on small businesses. Therefore, notwithstanding these issues, all steps should be taken to develop a reporting system as outlined below.

7.44 There is an onus on the government to lead by example and accordingly all public sector organisations should be required to undertake pay equity audits. For example, Dr Patricia Todd suggested that pay equity audits

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41 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 27.

42 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 26.

43 Ms Shirley Southgate, Principal Solicitor, Kingsford Legal Centre, *Transcript of Evidence*, 1 April 2009, p. 43.

44 Ms Shirley Southgate, Principal Solicitor, Kingsford Legal Centre, *Transcript of Evidence*, 1 April 2009, p. 43.

should be mandatory for the public sector and then for organisations wishing to tender for government business.<sup>45</sup>

### **Recommendation 25**

**That all federal public sector organisations be required to report biennially to the Pay Equity Unit within Fair Work Australia on the implementation of a diversity plan to increase pay equity.**

- 7.45 Further, all public services bodies are required to produce a Gender Equality Scheme including objectives for achieving gender equality for employees and in service provision.<sup>46</sup> The Equal Opportunity Commissioner of Western Australia supported a 'gender duty' requirement for all public authorities.<sup>47</sup>

Such duties exist already in the UK, the most recent being the 'gender equality duty' under the *Sex Discrimination Act 1975*, which has been in force since April 2007 ... Gender equality policy initiatives have also been formalised in Canada and a number of countries in the European Union, where it is known as 'gender mainstreaming'.<sup>48</sup>

### **Recommendation 26**

**That all federal public sector organisations be required to report biennially to the Pay Equity Unit within Fair Work Australia on the implementation of a gender equity duty in relation to employees and in service provision.**

45 Dr Patricia Todd, Senior Lecturer, Industrial Relations and Human Resources and Co-Director, Consortium for Diversity at Work, Business School, University of Western Australia, *Transcript of Evidence*, 5 November 2008, p. 60.

46 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 8.

47 Equal Opportunity Commission of Western Australia, *Submission No. 131*, p. 13.

48 Equal Opportunity Commission of Western Australia, *Submission No. 131*, pp. 13-14. *Sex Discrimination Act 1975*, as amended by the *Equality Act 2006*. A similar duty commenced under the *Disability Discrimination Act 1995* in December 2006 and under the *Race Relations Act 1976* in 2001. Federal Plan for Gender Equality', administered by Status of Women Canada.

- 7.46 The reporting requirements currently existing for private sector organisations should be continued but changed to biennial reporting rather than annual reporting in recognition of the time required to develop and implement organisational changes. The access to waivers for those organisation who have achieved their accreditation should also continue to be available.
- 7.47 EOWA believes that biennial reporting is an appropriate approach:  
 ... if it recognises the time required to consult with staff, do significant analysis and put in place appropriate interventions and policies that address the real issues rather than just being window-dressing but also if it enables EOWA to focus on education as well as the regulation.<sup>49</sup>

### Recommendation 27

**That all organisations with 100 or more employees be required to report biennially to the Pay Equity Unit within Fair Work Australia on the implementation of a diversity plan to increase pay equity.**

- 7.48 Work by Close the Gap in Scotland prepared Human Resources guidance and appropriate tools for small to medium firms but found it difficult to persuade these businesses to undertake audits in a voluntary system.<sup>50</sup> Ms Emma Ritch stated that the pay equity principles that are involved are 'not particularly onerous' and that the complexity increases with the increase in the number of staff.<sup>51</sup> There are a range of barriers to organisations undertaking pay equity audits:

These include the perceived level of time and resources needed to complete the audit, a lack of understanding of the ability of a pay equity audit to deliver tangible results, and an unwillingness to confront potential problems identified by the data analysis.<sup>52</sup>

49 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, pp. 26-27.

50 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 4.

51 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 8.

52 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 27.



- 7.49 Given the number of women in Australia employed by small businesses that this is an important part of the work in reducing the pay gender gap. Diversity plans for smaller organisations will have an educative value to make firms think about pay equity issues, but attempting to convince Australian small and medium businesses of the importance of addressing pay equity issues would be similarly difficult. This information is important, however, if Australia is to make progress in achieving pay equity and benefiting from associated economic gains.
- 7.50 The model used in Quebec is also based on the number of employees in a particular business:
- That is a recognition by the government of smaller businesses. The government body is taking up some of that extra work on behalf of the smaller sized businesses and then saying to an organisation of over 100 employees, 'You have the resources to do some of this yourself, so we'll ask you to do it yourself.' They are getting the basic data from the small, under 10, employers and then they are looking at what that data means rather than asking the employers to do that.<sup>53</sup>
- 7.51 In Australia, the Australian Taxation Office already collects wages information from employers. The information required by the Pay Equity Unit is therefore largely already collected by a government agency and should be made available to the unit in an aggregate form. At an aggregate level the ATO holds information by size of business, by location, by occupation, that would be relevant to the work of the proposed Pay Equity Unit and for the use of the Deputy President of Fair Work Australia who has responsibility for the Pay Equity Unit. The new Pay Equity Unit should be able to obtain wages and salary and other relevant information from the ATO on private companies and other organisations with 15 or more employees. Accordingly the Committee recommends:

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53 Ms Belinda Tkalcevic, Legal/Industrial Officer, Australian Council of Trade Unions, *Official Transcript of Evidence*, 3 April 2009, Melbourne, pp. 15-16.

**Recommendation 28**

**That the Pay Equity Act include a schedule for the amendment of the *Taxation Administration Act 1953*, specifying that the Commissioner be enabled to disclose aggregate wages and salary and other relevant information acquired under the taxation law to a Pay Equity Unit officer if the Commissioner is satisfied that the request is relevant and necessary to the work of the Unit.**

- 7.52 This approach will enable the Pay Equity Unit to analyse many of the pay equity issues on an industry and occupational basis. Once areas of significant discrepancies are identified, the Pay Equity Unit may require further information from those groups for additional analysis.
- 7.53 Reporting by small to medium firms should also be mandatory if a specific request is made to the organisation by the Pay Equity Unit. This approach will enable a phasing in of pay audits to address the more urgent situations without unnecessarily burdening those industries where the issues are less extreme. Accordingly the Committee recommends:

**Recommendation 29**

**That the proposed Pay Equity Act include a provision making it mandatory for small and medium businesses to be required to submit an audit report in response to a specific request from the Pay Equity Unit.**

- 7.54 Reporting by smaller firms should not be too onerous and an appropriate set of reporting requirements should be developed which are simpler and less resource intensive than those currently available. It was suggested that focusing on good indicators such as starting salary and performance pay would provide some indication as to whether further information should be sought.<sup>54</sup> This reporting could be incorporated within an existing process such as BAS statement or superannuation statements of smaller companies.

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54 Dr Kathy MacDermott, Adviser, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 20 August 2009, p. 11.

7.55 The reporting process would serve two purposes: one is to alert people where there is an issue; the other is to try and improve the quality of the information available to the people whose job it is to address that issue, so that they can do so with greater success. Information gained through this process would enable organisations such as Fair Work Australia, the Fair Work Ombudsman and the Australian Human Rights Commission to identify particular industries or workforce sectors where additional investigation is required.

### Research function

7.56 The establishment of a Pay Equity Unit with an adequate research role would provide the required information to form the basis for future policy directions and enable Australia to meet its international obligations. Research in Australia should include economic modelling to demonstrate the productivity costs to the Australian economy of the persistence of a substantial gender pay gap.<sup>55</sup> Information of this type has had a significant impact on the awareness in the British context. Research in this area has already been conducted by the EOWA.<sup>56</sup>

7.57 The Pay Equity Unit must also have the capacity and resources to undertake monitoring and research into wages and conditions. Australian Human Rights Commission also suggested the need to investigate the undervaluation and comparative worth in female dominated industries and occupations, particularly focusing on recognising 'soft' skills involved in caring work, knowledge work and communication, employee qualifications and on the job training as well as changing job demands and increased technology.<sup>57</sup>

7.58 Under ILO Convention 100 in relation to Equal Remuneration for Work of Equal Value, Australia is required to undertake industry comparisons.<sup>58</sup> The International Labour Organisation's Committee of Experts has commented on the deficiencies in many ratifying countries in relation to ILO Convention 111, the *Convention Concerning Discrimination in Respect of Employment and Occupation*, specifically:

- Insufficient data and research;
- Lack of understanding of equal value;

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55 See discussion in Diversity Council Australia, *Submission No. 110*, p. 20.

56 Equal Opportunity for Women in the Workplace Agency, *Submission No. 113*, pp. 14 -22.

57 Australian Human Rights Commission, *Submission No. 108*, p. 24.

58 See discussion in *ILO Equal remuneration: General Survey* by the Committee of Experts on the Application of Conventions and Recommendations, International Labour Office, Geneva, 1986, p. 10 cited in Group Training Australia, *Submission No. 45*, p. 4.

- Ignorance of the job evaluation processes necessary for determining the relative value of jobs; and
  - Inadequate financial resources for collection of data and instituting appropriate job evaluation schemes.<sup>59</sup>
- 7.59 The functions of the research facility within the Pay Equity Unit would include:
- developing appropriate tools and programs to assist employers to design pay equity plans and implement the audits for reporting purposes;
  - preparing guidelines to assist employers in implementing the requirements under the act;
  - monitoring and evaluating the effectiveness of workplace programs;
  - preparing relevant reports to the Minister and Government on wages and conditions and changes in pay equity outcomes;
  - providing information and assistance to employers through the maintenance of a website (discussed below); and
  - facilitating the collection of consistent and comparable data and liaising with Australian Bureau of Statistics and other relevant Federal departments and the Australian Public Service Commission, State and Local Governments, research institutions, business and industry bodies, unions and other relevant groups.
- 7.60 The Australian Services Union saw the role of a special unit in Fair Work Australia as gathering data, publicising best practice, issue regular updates on the achievement of equal remuneration.<sup>60</sup> A number of changes would be needed to ensure the effectiveness of this approach and should include:
- an amendment the Fair Work Act to extend the statutory research obligations of Fair Work Australia to conduct three yearly reports to include additional three yearly separate reporting on pay equity;
  - a requirement that for pay equity purposes the data must be disaggregated on the basis of gender and, in recognition that additional factors impact on pay equity, include also disability, age, ethnicity, child care responsibilities, marital status, region and employment status.

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59 Group Training Australia Ltd, *Submission No. 45*, p. 5.

60 Ms Jo Justo, National Industrial Officer, Australian Services Union, *Transcript of Evidence*, 31 March 2009, p. 61.

- requiring the provision of data by the Australian Bureau of Statistics and Australian Taxation Office on an occupation and industry basis and which is able to track trends over time.
- the establishment of a cross agency working group to ensure the data collection is comprehensive and fit for purpose;
- the availability of data, research and analysis for tri-annual reporting to Fair Work Australia with an obligation on the relevant Minister to table the report in Parliament; and
- provision for data to be made available for industry and occupational analysis at the direction of Fair Work Australia for the purpose of exercising its own functions under the Act (for example equal remuneration case or annual wage review).

- 7.61 Associate Professor Taksa and Dr Anne Junor suggested that the reviews should be allowed at industry, sector and occupational levels and include work value, occupational segregation and the fit between paid and unpaid work.<sup>61</sup> Industry specific benchmarking information should be made available.<sup>62</sup>
- 7.62 WISER called for 'a comprehensive research program systematically examining the wages and conditions in key industries and occupations in which minimum wage women workers are employed'.<sup>63</sup>
- 7.63 A comprehensive research function of the Pay Equity Unit is required because arguing pay equity cases is impossible without reliable accurate and up to date data on pay and conditions in industries and occupations when performing a gender neutral work value evaluation. Fair Work Australia needs reliable pay equity data to perform its award and minimum wage fixing functions. Furthermore, the data is necessary for Australia's reporting obligations under ILO and CEDAW.
- 7.64 Much of the data collection is likely to be obtained through existing systems but must be disaggregated if it is to be useful in providing measurement of progressive elimination of employment inequality. Disaggregation needs to be specified in the legislation or this may be overlooked in favour of using existing data sets that do not provide adequate information.

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61 Associate Professor Taksa and Dr Anne Junor, *Submission No. 109*, p. 7.

62 Law Council of Australia, *Submission No. 144*, p. 11.

63 WISER 2006 *Towards a Database of Women's Employment Status Key Indicators*, p. xviii.

- 7.65 Reporting that is independent from government would be a key feature of the Pay Equity Unit. The Pay Equity Unit should provide a report every four years, one year prior to Australia's reporting requirements under the international treaties such as CEDAW.<sup>64</sup>

### Educative function

- 7.66 The Pay Equity Unit would also have an educative role and would provide information to the public on the legislation; assist in training; work value processes; the development of workplace plans and programs; undertaking audits; and the requirements under the reporting obligations. EOWA currently provide an extensive range of resources available for the information of employers, government, media and the community.<sup>65</sup>
- 7.67 The establishment of a website for employers and employees would be beneficial. The publishing of market pay scales for occupations across a broad range of industries would provide guidance for negotiations and career choices.<sup>66</sup>
- 7.68 The website should provide accessible and timely information in relation to employment changes would be appreciated by some businesses. Fuji Xerox Australia utilise the Australian Bureau of Statistics specific market and demographic information but would like to an improvement in the timeliness and relevance of data that could provide some insight to pay equity and female workforce participation.<sup>67</sup>
- 7.69 The Western Australian Department of Consumer and Employment Protection stated:

In Australia, the provision of greater salary information to all employees would assist in overcoming transparency issues and support women in particular in negotiating salaries that appropriately reflect their skills and the market rates for their occupations. Fair Work Australia, as part of its education function, would be an appropriate body to monitor and publish pay scales for occupations and industries across Australia.<sup>68</sup>

64 See comments by Commissioner Elizabeth Broderick, Sex Discrimination Commissioner, Australian Human Rights Commission, *Transcript of Evidence*, 1 April 2009, p. 15.

65 Equal Opportunity for Women in the Workplace Agency, *Submission No. 113*, p. 13.

66 See Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 4. See also The Victorian Bar, *Submission No. 141*, p. 3.

67 Fuji Xerox Australia, *Submission No. 79*, p. 3.

68 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 32.

7.70 Furthermore:

In the commercial world, companies can buy wage data to set their wage rates and it would be beneficial for employees to have similar data available publicly for individual wage negotiations. For employers, market rate pay scales will help them benchmark their salaries. The provision of greater salary information to all employees would assist in overcoming issues of secrecy of wages in employment contracts and empower women in particular to negotiate salaries that appropriately reflect their skills and the market rates for their occupations. Fair Work Australia will have access to collective agreements and could use these to develop a list of wage rates, updated quarterly and made available to the public.<sup>69</sup>

7.71 The Equal Employment Opportunity Network of Australasia also saw value in ‘incentivising’ the achievement of best practice and not just seeking compliance.<sup>70</sup> The Victorian Government has also introduced an employer recognition program.<sup>71</sup> Electrolux stressed policies need to promote and reward initiatives that encourage female participation and ‘not merely mandate the bare requirements’.<sup>72</sup>

7.72 The promotion of pay equity principles and undertake initiatives such as the Employer of Choice for Women Awards and to undertake other initiatives to encourage best practice. Employer of Choice for Women awards is highly regarded.<sup>73</sup> Employers of Choice for Women are required to demonstrate a pay gap less than the industry average.<sup>74</sup>

7.73 The Employer of Choice for Women were considered beneficial in encourage larger companies to proactively participate in attaining pay equity. EOWA releases annually a list of non-government organisations who achieve Employer of Choice for Women status as that ‘recognise and advance their female workforce’. The Committee would like to see this

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69 Department of Consumer and Employment Protection, Government of Western Australia, *Submission No. 134*, p. 33.

70 Ms Juliet Bourke, Chair, Equal Employment Opportunity Network of Australasia, *Transcript of Evidence*, 26 September 2008, p. 81.

71 Mr Russel Bancroft, Officer, Department of Innovation, Industry and Regional Development, Victoria, *Transcript of Evidence*, 2 April 2009, p. 18.

72 Electrolux Home Products Pty Ltd, *Submission No. 105*, p. 4.

73 Ms Mairi Steele, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 20 August 2009, p. 11.

74 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 24.

program continued in the Pay Equity Unit and extended to awards for medium and small business categories

### Recommendation 30

**That the Employer of Choice for Women Awards be extended to medium and small business categories.**

7.74 An important aspect of successful education is adequate resourcing of the Pay Equity Unity. The Pay Equity Unit in Western Australia argued that is fundamental to have the capacity to provide direct assistance to employers.<sup>75</sup> EOWA added that:

what we do not have is the resources to assist employers more actively with how to use the tool, how to understand the scenarios that may be playing out in their workplace and then how to put in place a pay action plan to address the gap. That is what this proposal is about in relation to a three-year period to look at how you might expand that more broadly across employer groups and industries.<sup>76</sup>

7.75 The Chamber of Commerce and Industry in Western Australia confirmed that:

... employees that are undertaking those audits, too, need to be properly trained and properly equipped to understand what it is that they are doing and what they are seeking to achieve.<sup>77</sup>

7.76 In situations where there is a need to comply, the regulation becomes the focus of attention rather than education.<sup>78</sup> The Chamber of Commerce and Industry Western Australia added that:

Employers will not be happy if they are forced to introduce pay equity audits by legislation, because there will be time frames and a whole lot of compliance things that will make it more difficult

75 Ms Jenness Gardner, Manager, Pay Equity Unit, Department of Commerce, Western Australian Government, *Transcript of Evidence*, 26 February 2009, p. 11.

76 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 22.

77 Ms Marcia Kuhne, Director, Workplace Relations Policy, Chamber of Commerce Western Australia, *Transcript of Evidence*, 5 November 2008, p. 45.

78 Ms Marcia Kuhne, Director, Workplace Relations Policy, Chamber of Commerce Western Australia, *Transcript of Evidence*, 5 November 2008, p. 46.



for them to be introduced compared to how they might have introduced them if they went about it in a more positive fashion over a longer period of time.<sup>79</sup>

7.77 However, it is important that the significance of pay equity is understood and that pay equity becomes a promotion of best practice.

7.78 It is important that the business imperative and economic rationale of pay equity is understood<sup>80</sup> and that industry is convinced that this will make a difference to female participation in the workforce. The key outcomes of embracing pay equity need to be identified and measured against achievable Key Performance Indicators.

7.79 The work of the Pay Equity Unit would be seen to complement the work of the Fair Work Ombudsman who works with employees, employers, contractors and the community to promote harmonious, productive and cooperative workplaces. The Fair Work Ombudsman:

Provides advice and education on Australia's Workplace laws;  
Monitors compliance and investigates contraventions of national workplace laws;  
Publishes information on workplace rights and obligations; and  
Provides tools and information for small businesses.

7.80 The National Australia Bank conducted a pay equity audit and has subsequently introduced a number of initiatives such as including diversity and flexibility in the five-year strategic agenda and human capital strategy:

In summary, we believe that the audit process provided us with useful insights into our workforce and our culture and with the opportunity to make a real difference to our female employees through the adoption of programs and initiatives to support them in their careers and roles at NAB. I suppose our diversity agenda was, in part, shaped by the audit findings.<sup>81</sup>

7.81 Close the Gap in Scotland provides guidance for trade unions on how to use gender equality duty in the bargaining and negotiating processes and provides training to union representatives on how to deal with equal pay

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79 Ms Marcia Kuhne, Director, Workplace Relations Policy, Chamber of Commerce Western Australia, *Transcript of Evidence*, 5 November 2008, p. 56.

80 Ms Susan Heron, Chief Executive Officer, Australian Institute of Management, Victoria and Tasmania, *Transcript of Evidence*, 4 December 2008, p. 5; Ms Nareen Young, Executive Director, Diversity Council Australia Ltd, *Transcript of Evidence*, 26 September 2008, p. 41.

81 Ms Dorothy Hisgrove, Head, people and Change, National Australia Bank, *Transcript of Evidence*, 2 April 2009, p. 98.

differences in their workplace.<sup>82</sup> In the United Kingdom where gender pay audits are not mandatory, trade union pressure has been found to be a large factor in encouraging pay reviews.<sup>83</sup>

- 7.82 All of the above suggestions could be considered for implementation by the Pay Equity Unit.
- 7.83 The Australian Institute of Management Victoria and Tasmania commented that the Australian business sector has not fully engaged in the pay equity issue.<sup>84</sup> Equal Employment Opportunity Network alluded to a view that there can be a competitive advantage in constraining wages, in the case of paying women less and therefore pay equity is not a business priority.<sup>85</sup> AIM suggested that a body be established to connect with industry which should comprise government and industry representatives to look at practical solutions and the best approach to achieve some outcomes.<sup>86</sup>
- 7.84 A formal consultation process should be established to provide input from stakeholders on the activities of the Pay Equity Unit. One such model could be the Victorian Human Rights and Equal Opportunity Commission where the board has 'sufficient capacity to provide strategic oversight of the commission's broad responsibilities'.<sup>87</sup> The Australian Institute of Management added that:

... Government needs to get much better input and commitment from the private sector on how to solve the problems confronting the pay equity and participation crisis. It is apparent that existing organisations within Government such as the Equal Opportunity for Women in the Workplace Agency (EOWA) and the Sex Discrimination office within the Human Rights and Equal Opportunity Commission provide valuable insights on the problems facing women in the workplace. However, there appears to be scope to provide Government with ongoing, high quality

82 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 5.

83 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 5.

84 Ms Susan Heron, Chief Executive Officer, Australian Institute of Management, Victoria and Tasmania, *Transcript of Evidence*, 4 December 2008, p. 1.

85 Ms Juliet Bourke, Chair, Equal Employment Opportunity Network of Australasia, *Transcript of Evidence*, 26 September 2008, p. 84.

86 Ms Susan Heron, Chief Executive Officer, Australian Institute of Management, Victoria and Tasmania, *Transcript of Evidence*, 4 December 2008, p. 2.

87 Ms Sarah Tuberville, Officer, Department of Innovation, Industry and Regional Development, Victoria, *Transcript of Evidence*, 2 April 2009, p. 8.

input on ways for organisations to attract and retain women in the workforce - not just identify the issues that need to be addressed.<sup>88</sup>

7.85 The Australian Institute of Management suggested that the Government consider:

... the establishment of an independent, government owned organisation charged with engaging with industry to cultivate new approaches to overcome the problems preventing pay equity and higher participation rates. This organisation, small in scale, would be at arms length from the day to day operations of Government and would be structured as a company with a mix of government and business people on its Board. It would provide a key forum for the development and implementation of reform initiatives and elevate the importance of pay equity and participation on the business agenda. The organisation would require Government funding commitment for the first three to five years of its operations but thereafter the funding model could be transformed to see the private sector contribute the lion's share of the organisation's costs.<sup>89</sup>

7.86 The Australian Institute of Management suggested that the proposed board should include prominent business persons who are well regarded in the business community.<sup>90</sup>

7.87 The Finance Sector Union of Australia also stressed the importance of industry level consideration due to the complexities of the issues surround the pay gender gap.<sup>91</sup>

7.88 The Association of Professional Engineers, Scientist and Managers suggested the establishment of committees comprising key stakeholders in segments of the workforce such as specific industries of professions as there are more likely to be positive outcomes with the constructive engagement of unions, employer organisations and major employers.<sup>92</sup>

7.89 As discussed above, the information from the Australian Taxation Office would facilitate the identification of industries or sections of industries where pay inequity was more prevalent. This would enable the Pay Equity Unit to form committees comprising employers, unions, employees and

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88 Australian Institute of Management, *Submission No. 104*, p. 2.

89 Australian Institute of Management, *Submission No. 104*, p. 2.

90 Australian Institute of Management, *Supplementary Submission No. 104.1*, p. 2.

91 Finance Sector Union of Australia, *Submission No. 122*, p. 1.

92 Association of Professional Engineers, Scientist and Managers, *Submission No. 121*, p. 7.

other stakeholder to work together to develop appropriate measures relevant to that specific situation.

### Recommendation 31

**That the Deputy President of Fair Work Australia responsible for the Pay Equity Unit be required to seek advice through the appointment of an advisory board comprising unions, employers and employer groups and other stakeholders to provide strategic input in relation to industry specific strategies.**

### Measuring outcomes of the Pay Equity Unit

7.90 The union peak bodies suggested:

A system is required to effectively analyse the effectiveness of the pay equity provisions of the Act and the equal remuneration scheme as a whole. Analysis should include measurement of the prevalence of pay inequity, the effect of measures to address the key sources of pay inequity and the relative effectiveness of the pay equity scheme in delivering remedies to pay inequity.<sup>93</sup>

In Australia the WA Office of Women's policy keeps a modest score card against indicators such as representation of women in public life, labour force participation, health and well being of women and the number of women in senior positions and so on.<sup>94</sup>

7.91 An important aspect of the establishment of the Pay Equity Unit would be the development of a longitudinal data collection. The Unit should be established with the view that its operation be ongoing subject to the successful meeting of a defined set of KPIs. While it is envisaged that the need for a Pay Equity Unit would only be necessary until pay inequity is addressed, the reality is that the situation is complex and intractable political problem, further complicated in Australia by the fact that Australia is a federation. There needs to be considerable effort towards affecting a long term change.

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94 Australian Council of Trade Unions and Joint State Union Peak Councils, *Submission No 125*, p. 40.

7.92 The Scottish approach is to measure:

The national pay gap figure [as] one of the indicators [of] success... the difficulty with that in that the headline pay gap figure is a lagging indicator and it is also an incredibly blunt tool for measuring progress.<sup>95</sup>

7.93 The development of an appropriate set of performance measures is also a complex task. The use of the pay gender gap in itself, while it is an important measure, is not sufficient because of the lag factor and a number of other factors that can impact on this measure that would be beyond the scope of a Pay Equity Unit. The New Zealand experience has been that:

While some stakeholders have expected that the main yardstick of progress in the Plan of Action would be an early reduction in the gender pay gap, there are many reasons that it is too blunt a measure. The proportion of employed people covered by reviews by June 2009 is around 13.5%. Most – perhaps 80% – of the gender pay gap reflects occupational segregation, and changes in occupational segregation are inevitably slow since the existing stock of workers in highly segregated occupations is large and even if new entrants did enter different occupations it would take a long time for workforce composition to change. This is especially so where entry to occupations is through acquiring qualifications which can take some years and is in turn related to choices of subjects and vocational orientations at school. Sustainable change in complex HR, management and employment relations processes is not quickly or easily made.<sup>96</sup>

### Equal Opportunity for Women in the Workplace Agency

7.94 The Equal Opportunity for Women in the Workplace Agency currently monitors employers of 100 or more employees in relation to seven employment matters of which pay equity is one and the other aspects all impact on pay equity.<sup>97</sup> The agency focuses on improving women's workforce participation.<sup>98</sup> Businesses are required to report annually on the implementation of a pay equity program in relation to discrimination, recruitment and promotion, work organisation, sexual harassment and

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95 Ms Emma Ritch, Manager, Close the Gap, *Transcript of Evidence*, 11 August 2009, p. 2.

96 New Zealand Department of Labour, *Submission No. 148*, p. 11.

97 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 17.

98 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 18.

training and development.<sup>99</sup> The data collected by EOWA is largely qualitative and is used by businesses to benchmark, to understand best practice and to introduce change.<sup>100</sup>

7.95 On 1 June 2009 the Minister for the Status of Women, the Hon Tanya Plibersek MP, announced a review of EOWA and its underlying legislation, *Equal Opportunity for Women in Workplace Act 1999*.<sup>101</sup>

7.96 The former director, Ms Anna McPhee, commented that:

Pay equity is just one component of the seven employment matters that we work with employers on, but the seven employment matters, like access to training and development and work organisation, all impact on the pay equity situation for women.<sup>102</sup>

7.97 The current role and the functions of the EOWA would be subsumed into the structure of the proposed Pay Equity Unit within Fair Work Australia. While pay equity is central to gender equality, it is not the total sum and the current work of the Equal Opportunity for Women in the Workplace Agency is broader than this. The work of EOWA in relation to training, promotion and representation of women and other matters could be incorporated within the role of the Pay Equity Unit to strengthen the cooperation and coordination of these efforts. Accordingly the Committee recommends:

### **Recommendation 32**

**That the Equal Opportunity for Women in the Workplace Act 1999 be repealed and the functions of the office be incorporated in the proposed Pay Equity Act.**

99 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 19.

100 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 19.

101 Plibersek, T (Minister for the Status of Women) 2009, *Government announces review of Equal Opportunity for Women in the Workplace Agency*, media release, Parliament House, Canberra, 1 June 2009.

102 Ms Anna McPhee, Director, Equal Opportunity for Women in the Workplace Agency, *Transcript of Evidence*, 26 September 2008, p. 17.