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**Government of
South Australia**

**Submission to the House Standing Committee on Employment
and Workplace Relations' Inquiry into**

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

October 2008

Executive Summary

The South Australian Government welcomes the opportunity to make this submission to the House of Representatives Standing Committee on Employment and Workplace Relations *Inquiry into Pay Equity and Associated Issues Related to Increasing Female Participation in the Workforce*.

It recognises that gender pay inequity exists within a greater context of disadvantage for women in the paid workforce and that attempts to redress gender pay inequity must be lateral to addressing the variety of institutionalised barriers to women's full and equal participation in the workplace. Within this context, it recognises that this Inquiry and its recommendations are likely to be supplemented by the recommendations of the current inquiry being undertaken by the Productivity Commission into Paid Parental Leave.

In this submission, the South Australian Government contends that Australia has a historic opportunity to address pay equity issues within the context of the establishment of a new national system of industrial relations. The full implementation of *'Forward with Fairness'* offers the potential to ensure that the regulation of industrial relations in Australia recognises the realities of the contemporary workplace, particularly as it impacts on women's participation.

The South Australian Government Submission considers the opportunities arising from the development of the national industrial relations legislation. It notes the statement in *Fact Sheet Number 4 – Minimum Wages* released by the Government on 17 September 2008:

*'As well, the legislation will retain the current requirements for pay equity – equal pay for work of equal value – **pending any new recommendations made by the House of Representatives Standing Committee on Employment and Workplace Relations' Inquiry into pay equity and associated issues related to increasing female participation in the workforce**'* (emphasis added.)

The Submission also focuses on the importance of education and research as twin pillars upon which to build a greater understanding and awareness of the issues relating to pay inequity.

The South Australian Government proposes that the Committee consider the following initiatives:

1. The ultimate implementation of equal remuneration principles and operative provisions dealing with pay equity within the new national system of industrial relations for the private sector, based on the definition 'equal remuneration for men and women doing work of equal or comparable value';
2. Fair Work Australia, in its role as 'independent umpire', be given the discretion to apply pay equity principles in its safety net and dispute resolution roles;

3. Steps are taken to ensure that the National Employment Standards, in particular, the right to request flexible working hours, operate effectively;
4. A Pay Equity Strategy be implemented that emphasises the value of gender neutral job evaluation standards, pay equity audits and the promotion of women's participation to employers and industry; and
5. That the collection of lateral and comprehensive gender disaggregated data on employment conditions be undertaken as a part of the Pay Equity Strategy.

Introduction

Pay equity as a concept is much larger than identical pay for identical work. Many of the contributors to pay inequity are well documented and include:

- undervaluation of work predominantly performed by women;
- concentration of women in lower level classifications with fewer opportunities for training and skill development;
- caring responsibilities being undertaken disproportionately by women;
- the resulting effect of breaks in workforce participation, particularly in relation to unpaid parental leave or working casual or part time in an attempt to balance work and family responsibilities;
- concentration of women in part time and casual employment leading to few opportunities for skill development and advancement;
- reliance by women on awards as their primary wage setting arrangement;
- absence of appropriate classification structures that facilitate career progression for women;
- poor recognition of qualifications, including vastly different remuneration scales for occupations requiring similar qualifications such as that of automotive mechanic and childcare worker;
- the gendered characteristics of the work undertaken by women;
- a lack of promotion and training opportunities following return to work after having a child;
- the way that 'work' and how we value work is understood and interpreted within the industrial system; and
- inadequate application of previous equal pay measures.

While legislation in the 1960s and 1970s did make progress in closing the gender pay gap, progress has stalled since the early 1980s.

Historically, it has been through industrial relations legislation and specifically through empowering industrial tribunals to consider pay equity matters, that governments have exercised their most direct influence on pay equity. Past initiatives have also included anti-discrimination and equal opportunity laws, policies and programmes. All of these approaches were primarily directed at removing barriers to women's participation in the labour market and at removing overt discrimination in the workplace.

Addressing pay equity continues to require a multi-dimensional approach, including an examination of the undervaluation of women's work but also an examination of other areas that support women's participation in the workforce including the availability of flexible work arrangements, paid maternity leave, accessible childcare for mothers, quality part time work and opportunities for training and promotion. Pay equity will only be achieved by removing sex discrimination from wage setting and ensuring a range of outcomes from the use of gender-neutral selection criteria to equal remuneration outcomes to equality in discretionary payments, bonuses and superannuation.

Current Federal Equal Remuneration Provisions are based on equal value principles but these principles have had little impact on improving the rates for workers in women-dominated professions. Gender-neutral evaluations of the value of job requirements are needed to address this historical undervaluation of women's contributions. For example, evaluations could compare educational requirements, the nature and responsibilities and a gender-neutral evaluation of the suite of soft and hard skills required to successfully perform a job.

The long-term effects of the gender remuneration gap are particularly significant. Women's retirement funds, compared to those of men, are often diminished given the lost employer contributions over time, the loss of opportunity to make personal contributions and the impact of this on the financial return on their retirement funds.

Pay inequity is a consistent in all professions and at all levels. Research by GradStats has shown that women graduates start their career on the backfoot, earning in 2007 on average \$42,000 a year compared to \$45,000 for their male colleagues.¹ Research indicates that the pay gap increases at higher levels; in 2006 the Equal Opportunity for Women in the Workplace Agency showed that in ASX 200 companies, female chief financial officers and chief operating officers each earn a median of 50% less than their male counterparts while female chief executive officers earned a median of 67.7% of male counterparts.² Women's participation in the workforce is also directly impacted by the fact that unpaid labour continues to be done disproportionately by women, therefore limiting women's availability to participate in paid labour relative to men.

In addition to the specific recommendations outlined in this Submission, reducing pay inequity also depends on the establishment of universally-available paid parental leave, greater moves to increase women's retirement savings and increased measures to encourage work-life balance among both men and women. Families also require accessible, affordable quality childcare for parents to be able to participate in the workforce.

These related implementation issues are canvassed at the conclusion of this Submission.

¹ *GradStats* Number 12, December 2007, <http://www.graduatecareers.com.au/content/download/3464/14502/file/GradStats%202007.pdf>, p.1.

² Equal Opportunity for Women in the Workplace Agency *Gender Income Distribution of Top Earners in ASX200 Companies 2006 EOWA Census of Women in Leaderships*, 2008.

Proposed Initiatives for consideration by the Committee

Initiative 1:

The ultimate implementation of equal remuneration principles and operative provisions dealing with pay equity within the new national system of industrial relations for the private sector based on the definition 'equal remuneration for men and women doing work of equal or comparable value'.

Equal Remuneration Principles

Since the 1970s, Australia has been one of the few countries that progressively advanced the concept of gender pay equity. This was largely due to the centralised, industrial tribunal based, wage-fixing system that ensured a single application to Federal or State tribunals could deliver wage increases that flowed automatically and immediately to women employed in workplaces covered by a particular award.

The 2005 Work Choices amendments to the *Workplace Relations Act 1996* (WRA) effectively ended the tribunal based wage determination arrangements for most employees by focusing on agreement making at the workplace and, in particular, at the individual level.

The current WRA provisions refer to '*equal remuneration for men and women workers for work of equal value*' (section 623) and notes that the term refers to rates of remuneration established without discrimination based on sex. The recently released fact sheet relating to minimum wages in the proposed new national system states that these provisions will be retained pending the outcome of this Inquiry³.

The *Fair Work Act 1994* in its objectives refers to '*equal remuneration for men and women doing work of equal or **comparable value***' (section 3(1)(m), emphasis added). South Australia submits that any definitions in the new Federal industrial relations law should reflect the broader term used in our State legislation. This definition should also be used more generally in any discussions relating to the concept of equal remuneration.

The current Federal provisions are similar to the pre-Work Choices WRA provisions and require the consideration of equal remuneration cases based on a test of sex discrimination. This test therefore relies on a comparison against a male comparator group and fails to address the broader issues of gender pay inequity, which are generally systemic, and not necessarily the result of overt discrimination. Specifically, they do not address the broader issues underpinning pay equity referred to at page 4 above⁴.

³ Australian Government, *Fact Sheet 4, Minimum Wages*, 17 September 2008.

⁴ The two cases decided under the pre Work Choices provisions, *Automotive, Food, Metals Engineering, Printing and Kindred Industries Union and HPM Industries*, C No.23922 of 1995 and

It is also important to remember that since Work Choices, the Australian Industrial Relations Commission (AIRC) no longer has the capacity to fix wages, that role being transferred to the Australian Fair Pay Commission (AFPC).

In recent years, State tribunals have been at the forefront of pay equity developments. New South Wales and Queensland in particular have adopted new equal remuneration wage fixing principles resulting in notable increases in award based wages for certain industries dominated by women workers.⁵

South Australia recommends that in assessing potential future legislative provisions for equal remuneration, consideration be given to the current Queensland legislation. The latter uses the concept of undervaluation rather than discrimination and identifies areas worthy of investigation in identifying potential undervaluation. There is no requirement for comparators in the Queensland model – they may be utilised but are not a necessary precondition.

Initiative 2:

Fair Work Australia, in its role as ‘independent umpire’, be given the discretion to apply pay equity principles in its safety net and dispute resolution roles.

The Role of Fair Work Australia

An important element of the Commonwealth Government’s proposed national system of industrial relations is a one-stop shop ‘umpire’ called Fair Work Australia (FWA). FWA will include an independent judicial arm to establish and review minimum standards and exercise ‘judicial power’. It will also undertake dispute resolution, the review and approval of collective agreements and education and enforcement activities. In so doing, the new body will replace all of the institutions and agencies established under Work Choices; namely the AFPC, the AIRC, the Workplace Ombudsman and the Workplace Authority.

The powers and functions given to FWA will be crucial for its capacity to influence pay equity issues on a practical level.

South Australia proposes that consideration be given to FWA having the discretion to apply pay equity principles to its safety net and dispute resolution roles.

The system of minimum wage regulation assigned to FWA is of particular importance for working women, given their higher dependence on minimum wages.

Automotive, Food, Metals Engineering, Printing and Kindred Industries Union and HPM Industries v David Syme & Co Ltd, C No.30630 of 1999 demonstrate how difficult a hurdle the threshold test of discrimination proved to be. The result of these cases was to tighten the grounds upon which equal remuneration claims could be heard.

⁵ However, s16(1)(c) of the WRA currently excludes the operation of these state laws and many of the gains by women workers in these areas have been lost.

Currently the AFPC sets minimum wages within a quite narrow economic focus. It is not legislatively obliged to consider wage justice and pay equity goals as part of its wage setting parameters⁶.

The South Australian Government notes that the recent fact sheet relating to minimum wages explains the role of a new 'Minimum Wages Panel' within FWA. It states that

'When setting and adjusting minimum wages, the Minimum Wages Panel will take into account:

- *the performance and competitiveness of the national economy, including productivity, inflation and employment growth;*
- *promoting social inclusion through increased workforce participation;*
- *relative living standards and the needs of the low paid; and*
- *providing a comprehensive range of fair minimum wages for junior employees, employees to whom training arrangements apply and employees with a disability.'*

While it is encouraging that a criteria dealing with workforce participation and social inclusion will be part of the statutory framework under the new system, there is still no specific reference to pay equity factors. South Australia submits that in its role in maintaining the safety net of wages and conditions, FWA consider pay equity principles.

Initiative 3

Steps are taken to ensure that the National Employment Standards, in particular, the right to request flexible working hours operate effectively.

Flexible Working Arrangements

Flexible working hours arrangements have the potential to address a number of current barriers to women's full and equal participation in the workplace. Implementation of such arrangements through formal processes anticipated by the National Employment Standard would address problems around breaks in workforce participation and loss of opportunity for skill development and promotion where family demands change - when women return to work following birth of a child for example.

⁶ Section 23 (a-d) of the WRA sets out the AFPC's wage setting parameters as follows: *The objective of the AFPC in performing its wage-setting function is to promote the economic prosperity of the people of Australia having regard to the following: the capacity for the unemployed and low paid to obtain and remain in employment; employment and competitiveness across the economy; providing a safety net for the low paid; providing minimum wages for junior employees, employees to whom training arrangements apply and employees with disabilities that ensure those employees are competitive in the labour market.*

Flexible arrangements would allow women with caring responsibilities to maintain career goals and aspire to advancement.

Flexible arrangements would also assist in the creation of quality part time work that exists as an integral part of a workplace rather than a disconnected add-on of miscellaneous tasks, or worse, a full time role undertaken in reduced time.

Such arrangements would address the problem of women feeling they must “go casual” or in extreme cases cease work altogether for extended periods because of family responsibilities with the end result being loss of continuity, income and diminution of retirement fund contributions.

The responsibility for care of children, elders and the disabled has traditionally fallen entirely on working women in households where both parents work: the so-called “second shift” leaves no time for women to engage in study or self development towards career advancement.

Flexible working hours options available to both men and women would support men in engaging in caring activities so that women are not solely responsible and can devote time to study or training.

While the hours and circumstances in which women work remain inflexible they will continue to be time poor, struggling to fit the needs of family around the demands of the working day; trapped in the undervalued low level jobs in which the female workforce is currently concentrated with no time left for additional training and thus no hope of equipping themselves to advance career goals.

The effective operation of the right to request flexible working hours arrangements would bring more women to the workforce at a time of labour demand, retain those already participating and increase their potential, creating an environment in which the goal of pay equity is advanced.

Initiative 4

A pay equity strategy be implemented that emphasises the value of pay equity, gender neutral job evaluation standards, pay equity audits and the promotion of women’s participation to employers and industry.

To counter the pervasive nature of pay inequity, South Australia proposes that an adequately resourced Pay Equity Strategy should be developed. The Strategy would have a three-fold function: monitoring, education and implementation.

Monitoring

The Strategy could coordinate research and monitor trends regarding the status of pay equity over time. This role would entail developing clarity and consistency for employers by creating standard definitions of concepts related to pay equity, such as “comparable value” and “flexible working practices.” This function would also require coordinating and overseeing national research related to pay equity.

Education

The Strategy could include educating both employers about their responsibilities and employees about their rights regarding remuneration and the ability to request flexible working conditions. It could provide businesses with the tools to prevent damage to staff morale and productivity while bringing practices in line with pay equity requirements. Disseminating pay equity research could also be used as part of the strategy to promote awareness of continuing gender pay inequity. It could also encourage greater transparency in pay structures, including over-award and other discretionary payments.

Implementation

The Pay Equity Strategy could also promote available tools to address pay inequity such as pay equity audits and gender neutral job evaluations. It could also develop strategies to progress pay equity, for example Government-committed targets in reducing the gender pay gap.

Implementation mechanisms to support existing equal remuneration legislation are important to improving pay equity within individual workplaces.

Practical resources for the strategy could include trained officers for employees and employers to discuss pay equity issues, and hands-on advice and assistance to employers to conduct pay equity audits. These resources could be of particular benefit to employees and employers in the small business sector.

Pay equity audits, which provide an analysis of payroll data to determine areas and occupations where gender pay differentials may exist, could be utilised to highlight those areas of work which have been undervalued and which could be subsequently reviewed against a Gender Inclusive Job Evaluation Standard.

Issues of enforcement and compliance with equal remuneration principles and other pay equity legislation would need to be further considered in the context of the final legislation establishing the national industrial relations system.

Gender Inclusive Job Evaluation Standard

An Australian Gender Inclusive Job Evaluation Standard could also be developed, possibly based on the standards already developed and utilised in other jurisdictions. This standard would provide gender-neutral language to describe tasks and skills and a process for in-house reclassification appeals on the basis of work value. This particular device could be utilised in reassessing classifications in awards and in facilitating equitable descriptions of skills and classification levels in individual employment arrangements.

Initiative 5:

The collection of lateral and comprehensive gender disaggregated data on employment conditions be undertaken as a part of the Pay Equity Strategy.

Comprehensive national data is crucial to fully understanding and progressing pay equity. In 2005, HREOC, Women's Electoral Lobby and the National Foundation for Australian Women funded research completed by Women in Social & Economic Research, *Women's Pay and Conditions in an Era of Changing Workplace Regulations: Towards a "Women's Employment Status Key Indicators" (WESKI) Database*. This report recommended comprehensive, detailed indicators for employment conditions, such is currently undertaken in Queensland, New South Wales and Victoria. These indicators include the amount of employees accessing family friendly employment benefits, the availability of flexible start and finish times and the incidence of ordinary working hours of more than forty per week.

The South Australian Government proposes that consideration be given to the effect of the indicators identified by this research with attention being paid to disaggregating the data by age, gender, cultural background and region.

Related Implementation Issues***Paid Parental Leave***

Given women's fundamental role in reproduction, gender pay equity will not be achieved without a national mandatory scheme of paid parental leave for all women in the paid workforce.

Not only would paid parental leave support mother and infant health and early childhood development, it would maximise the economic benefits of women's paid workforce participation and promote gender equity in both paid and unpaid work.

Some working women find it difficult to maintain their attachment to the workforce on the birth of a child, and consequently resign from their jobs. A survey found that 23% of women who had quit their job, and had been with their employer for more than 12 months, identified that a lack of paid paternity leave was one of the reasons they chose to quit.⁷

Losing attachment to the workforce can make it more difficult for women to return to work because of the additional pressures of job search, finding appropriate part-time work if desired, and in negotiating flexible work arrangements with a new and unknown employer.⁸

⁷ Whitehouse, Baird & Hosking, 2006, *The parental Leave in Australia Survey*: November 2006 Report, www.uq.edu.au/polsis/parentalleave/level1-report.pdf

⁸ SA Government, (2008) An initial submission to the Productivity Commission's Inquiry into Paid Maternity, Paternity and Parental Leave.

Further, when leaving work for child rearing reasons women break their work tenure and continuity. Findings from the consultations of SA's Women's Employment Participation Initiative⁹ indicate that women who are out of the workforce for a period time can lose confidence in their skills and abilities to return to work and need additional support to re-enter the workforce.

While out of the workforce, women also miss out on the promotional opportunities that they would have otherwise been exposed to. It has been found that both men and women fear requesting flexible work arrangements because they fear losing promotional opportunities.¹⁰ Women, in particular therefore, when returning to the workforce, are much more vulnerable to the potential loss of promotional prospects.

Women should not be discriminated against in the workforce on the basis of their role as child bearer and carer. Women not only directly lose income and promotional opportunities by choosing to bear and raise children, they also lose the prospects of future promotion and stable earnings. To offer women the opportunity to access paid maternity leave and remain linked to their current employment (with the right to return to fulltime or flexible working arrangements) would be a significant step in ensuring that women gain equal access to work and the associated social and economic benefits that brings.

Women's Retirement Savings

The costs of not addressing the gender pay gap may be dramatic given its effects on women's lifetime savings and superannuation. Pay inequity results not only in women receiving lower employer contributions to their superannuation funds but also, relatively lower disposable income to make employee contributions and the loss of compounding interest on those contributions. Savings and superannuation are also reduced by a lack of paid parental leave and flexible working conditions, resulting in career interruptions as some women take time out of the workforce for their caring responsibilities.

Over a lifetime of earnings, these cumulative differences can be profound, resulting in stunted career progression and a disproportionate number of women with inadequate personal savings who rely on the age pension as their main source of income. By employers not meeting their ethical and legal responsibilities to remunerate women comparably with men for comparable work, the burden of care is shifted to government, creating a risk to state finances.

Economic Implications

If these proposals were ultimately adopted, there may over time be increased costs to business. This is likely to be balanced, however, by enhanced retention and attraction of the best talent, increased participation, productivity and innovation, gains in numbers of female customers and the reduction in the risk of discrimination and harassment claims.

⁹ The Women's Employment Participation Initiative is an initiative of the Department of Further Education, Employment, Science and Technology, the Office for Women, and SafeWork SA.

¹⁰ Ibid., p. 62.

The extent of the impact will also be relative to the equitable work practices in each business. If pay inequity is not currently an issue for business, then arguably, there will be minimal financial impact.

If the cost of labour increases as a result of award modernisation, this may have an impact on the employment choices businesses and industries make.

Where minimum wages are adjusted to reflect pay equity considerations, these may create some pressures on employment levels due to declining marginal productivity. Where these adjustments have been made in the past, however, they have usually been accompanied by long notice periods and the impact will also be less in those areas where market driven rates are already higher than the minimum wages that will be adjusted, as is the case in some of the areas that would likely be reviewed.